

United States Code Annotated [Currentness](#)

Title 25. Indians

→ [Chapter 43](#). Native American Housing Assistance and Self-Determination ([Refs & Annos](#))

→ **§ 4101. Congressional findings**

The Congress finds that--

(1) the Federal Government has a responsibility to promote the general welfare of the Nation--

(A) by using Federal resources to aid families and individuals seeking affordable homes in safe and healthy environments and, in particular, assisting responsible, deserving citizens who cannot provide fully for themselves because of temporary circumstances or factors beyond their control;

(B) by working to ensure a thriving national economy and a strong private housing market; and

(C) by developing effective partnerships among the Federal Government, State, tribal, and local governments, and private entities that allow government to accept responsibility for fostering the development of a healthy marketplace and allow families to prosper without government involvement in their day-to-day activities;

(2) there exists a unique relationship between the Government of the United States and the governments of Indian tribes and a unique Federal responsibility to Indian people;

(3) the Constitution of the United States invests the Congress with plenary power over the field of Indian affairs, and through treaties, statutes, and historical relations with Indian tribes, the United States has undertaken a unique trust responsibility to protect and support Indian tribes and Indian people;

(4) the Congress, through treaties, statutes, and the general course of dealing with Indian tribes, has assumed a trust responsibility for the protection and preservation of Indian tribes and for working with tribes and their members to improve their housing conditions and socioeconomic status so that they are able to take greater responsibility for their own economic condition;

(5) providing affordable homes in safe and healthy environments is an essential element in the special role of the United States in helping tribes and their members to improve their housing conditions and socioeconomic status;

(6) the need for affordable homes in safe and healthy environments on Indian reservations, in Indian communities, and in Native Alaskan villages is acute and the Federal Government shall work not only to provide housing assistance, but also, to the extent practicable, to assist in the development of private housing finance mechanisms on Indian lands to achieve the goals of economic self-sufficiency and self-determination for tribes and their members; and

(7) Federal assistance to meet these responsibilities shall be provided in a manner that recognizes the right of Indian self-determination and tribal self-governance by making such assistance available directly to the Indian tribes or tribally designated entities under authorities similar to those accorded Indian tribes in [Public Law 93-638 \(25 U.S.C. 450 et seq.\)](#).

§ 4102. Administration through office of Native American Programs

The Secretary of Housing and Urban Development shall carry out this chapter through the Office of Native American Programs of the Department of Housing and Urban Development.

§ 4103. Definitions

For purposes of this chapter, the following definitions shall apply:

(1) Adjusted income

The term “adjusted income” means the annual income that remains after excluding the following amounts:

(A) Youths, students, and persons with disabilities

\$480 for each member of the family residing in the household (other than the head of the household or the spouse of the head of the household)--

(i) who is under 18 years of age; or

(ii) who is--

(I) 18 years of age or older; and

(II) a person with disabilities or a full-time student.

(B) Elderly and disabled families

\$400 for an elderly or disabled family.

(C) Medical and attendant expenses

The amount by which 3 percent of the annual income of the family is exceeded by the aggregate of--

(i) medical expenses, in the case of an elderly or disabled family; and

(ii) reasonable attendant care and auxiliary apparatus expenses for each family member who is a person with disabilities, to the extent necessary to enable any member of the family (including a member who is a person with disabilities) to be employed.

(D) Child care expenses

Child care expenses, to the extent necessary to enable another member of the family to be employed or to further his or her education.

(E) Earned income of minors

The amount of any earned income of any member of the family who is less than 18 years of age.

(F) Travel expenses

Excessive travel expenses, not to exceed \$25 per family per week, for employment- or education-related travel.

(G) Other amounts

Such other amounts as may be provided in the Indian housing plan for an Indian tribe.

(2) Affordable housing

The term “affordable housing” means housing that complies with the requirements for affordable housing under subchapter II of this chapter. The term includes permanent housing for homeless persons who are persons with disabilities, transitional housing, and single room occupancy housing.

(3) Drug-related criminal activity

The term “drug-related criminal activity” means the illegal manufacture, sale, distribution, use, or possession with intent to manufacture, sell, distribute, or use, of a controlled substance (as such term is defined in [section 802 of Title 21](#)).

(4) Elderly families and near-elderly families

The terms “elderly family” and “near-elderly family” mean a family whose head (or his or her spouse), or whose sole member, is an elderly person or a near-elderly person, respectively. Such terms include 2 or more elderly persons or near-elderly persons living together, and 1 or more such persons living with 1 or more persons determined under the Indian housing plan for the agency to be essential to their care or well-being.

(5) Elderly person

The term “elderly person” means a person who is at least 62 years of age.

(6) Family

The term “family” includes a family with or without children, an elderly family, a near-elderly family, a disabled family, and a single person.

(7) Grant beneficiary

The term “grant beneficiary” means the Indian tribe or tribes on behalf of which a grant is made under this chapter to a recipient.

(8) Housing related community development

(A) In general

The term “housing related community development” means any facility, community building, business, activity, or infrastructure that--

- (i) is owned by an Indian tribe or a tribally designated housing entity;
- (ii) is necessary to the provision of housing in an Indian area; and
- (iii)(I) would help an Indian tribe or tribally designated housing entity to reduce the cost of construction of Indian housing;
- (II) would make housing more affordable, accessible, or practicable in an Indian area; or
- (III) would otherwise advance the purposes of this chapter.

(B) Exclusion

The term “housing and community development” does not include any activity conducted by any Indian tribe under the Indian Gaming Regulatory Act ([25 U.S.C. 2701 et seq.](#)).

(9) Income

The term “income” means income from all sources of each member of the household, as determined in accordance with criteria prescribed by the Secretary, except that the following amounts may not be considered as income under this paragraph:

- (A) Any amounts not actually received by the family.
- (B) Any amounts that would be eligible for exclusion under [section 1382b\(a\)\(7\) of Title 42](#).
- (C) Any amounts received by any member of the family as disability compensation under chapter 11 of Title 38 or dependency and indemnity compensation under chapter 13 of such title.

(10) Indian

The term “Indian” means any person who is a member of an Indian tribe.

(11) Indian area

The term “Indian area” means the area within which an Indian tribe or a tribally designated housing entity, as authorized by 1 or more Indian tribes, provides assistance under this chapter for affordable housing.

(12) Indian housing plan

The term “Indian housing plan” means a plan under [section 4112](#) of this title.

(13) Indian tribe

(A) In general

The term “Indian tribe” means a tribe that is a federally recognized tribe or a State recognized tribe.

(B) Federally recognized tribe

The term “federally recognized tribe” means any Indian tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act [[43 U.S.C.A. § 1601 et seq.](#)], that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians pursuant to the Indian Self-Determination and Education Assistance Act ([25 U.S.C. 450 et seq.](#)).

(C) State recognized tribe

(i) In general

The term “State recognized tribe” means any tribe, band, nation, pueblo, village, or community--

(I) that has been recognized as an Indian tribe by any State; and

(II) for which an Indian Housing Authority has, before the effective date under [section 705](#), entered into a contract with the Secretary pursuant to the United States Housing Act of 1937 [[42 U.S.C.A. § 1437 et seq.](#)] for housing for Indian families and has received funding pursuant to such contract within the 5-year period ending upon such effective date.

(ii) Conditions

Notwithstanding clause (i)--

(I) the allocation formula under [section 4152](#) of this title shall be determined for a State recognized tribe under tribal membership eligibility criteria in existence on October 26, 1996; and

(II) nothing in this paragraph shall be construed to confer upon a State recognized tribe any rights, privileges, responsibilities, or obligations otherwise accorded groups recognized as Indian tribes by the United States for other purposes.

(14) Low-income family

The term “low-income family” means a family whose income does not exceed 80 percent of the median income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may, for purposes of this paragraph, establish income ceilings higher or lower than 80 percent of the median for the area on the basis of the findings of the Secretary or the agency that such variations are necessary because of prevailing levels of construction costs or unusually high or low family incomes.

(15) Median income

The term “median income” means, with respect to an area that is an Indian area, the greater of--

(A) the median income for the Indian area, which the Secretary shall determine; or

(B) the median income for the United States.

(16) Near-elderly person

The term “near-elderly person” means a person who is at least 55 years of age and less than 62 years of age.

(17) Nonprofit

The term “nonprofit” means, with respect to an organization, association, corporation, or other entity, that no part of the net earnings of the entity inures to the benefit of any member, founder, contributor, or individual.

(18) Person with disabilities

The term “person with disabilities” means a person who--

(A) has a disability as defined in [section 423 of Title 42](#);

(B) is determined, pursuant to regulations issued by the Secretary, to have a physical, mental, or emotional impairment which--

(i) is expected to be of long-continued and indefinite duration;

(ii) substantially impedes his or her ability to live independently; and

(iii) is of such a nature that such ability could be improved by more suitable housing conditions; or

(C) has a developmental disability as defined in [section 15002 of Title 42](#).

Such term shall not exclude persons who have the disease of acquired immunodeficiency syndrome or any conditions arising from the etiologic agent for acquired immunodeficiency syndrome. Notwithstanding any other provision of law, no individual shall be considered a person with disabilities, for purposes of eligibility for housing assisted under this chapter, solely on the basis of any drug or alcohol dependence. The Secretary shall consult with other appropriate Federal agencies to implement the preceding sentence.

(19) Recipient

The term “recipient” means an Indian tribe or the entity for one or more Indian tribes that is authorized to receive grant amounts under this chapter on behalf of the tribe or tribes.

(20) Secretary

Except as otherwise specifically provided in this chapter, the term “Secretary” means the Secretary of Housing and Urban Development.

(21) State

The term “State” means the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, and any other territory or possession of the United States and Indian tribes.

(22) Tribally designated housing entity

The terms “tribally designated housing entity” and “housing entity” have the following meaning:

(A) Existing IHA'S

With respect to any Indian tribe that has not taken action under subparagraph (B), and for which an Indian housing authority--

(i) was established for purposes of the United States Housing Act of 1937 [[42 U.S.C.A. § 1437 et seq.](#)] before October 26, 1996 that meets the requirements under the United States Housing Act of 1937,

(ii) is acting on October 26, 1996, as the Indian housing authority for the tribe, and

(iii) is not an Indian tribe for purposes of this chapter,

the terms mean such Indian housing authority.

(B) Other entities

With respect to any Indian tribe that, pursuant to this chapter, authorizes an entity other than the tribal government to receive grant amounts and provide assistance under this chapter for affordable housing for Indians, which entity is established--

(i) by exercise of the power of self-government of one or more Indian tribes independent of State law, or

(ii) by operation of State law providing specifically for housing authorities or housing entities for Indians, including regional housing authorities in the State of Alaska,

the terms mean such entity.

(C) Establishment

A tribally designated housing entity may be authorized or established by one or more Indian tribes to act on behalf of each such tribe authorizing or establishing the housing entity.

§ 4104. Waiver of matching funds requirements in Indian housing programs

(a) Authorization of waiver

For any housing program that provides assistance through any Indian housing authority, the Secretary of Housing and Urban Development may provide assistance under such program in any fiscal year notwithstanding any other provision of law that requires the Indian housing authority to provide amounts to match or supplement the amounts provided under such program, if the Indian housing authority has not received amounts for such fiscal year under title I of the Housing and Community Development Act of 1974 [[42 U.S.C.A. § 5301 et seq.](#)].

(b) Extent of waiver

The authority under subsection (a) of this section to provide assistance notwithstanding requirements regarding matching or supplemental amounts shall be effective only to the extent provided by the Secretary, which shall not extend beyond the fiscal year in which the waiver is made or beyond the receipt of any amounts by an Indian housing authority under title I of the Housing and Community Development Act of 1974 [[42 U.S.C.A. § 5301 et seq.](#)].

(c) Definition of housing program

For purposes of this section, the term “housing program” means a program under the administration of the Secretary of Housing and Urban Development or the Secretary of Agriculture (through the Administrator of the Farmers Home Administration) that provides assistance in the form of contracts, grants, loans, cooperative agreements, or any other form of assistance (including the insurance or guarantee of a loan, mortgage, or pool of mortgages) for housing.

§ 4111. Block grants

(a) Authority

(1) In general

For each fiscal year, the Secretary shall (to the extent amounts are made available to carry out this chapter) make grants under this section on behalf of Indian tribes--

(A) to carry out affordable housing activities under part A of subchapter II of this chapter; and

(B) to carry out self-determined housing activities for tribal communities programs under part B of that subchapter.

(2) Provision of amounts

Under such a grant on behalf of an Indian tribe, the Secretary shall provide the grant amounts for the tribe directly to the recipient for the tribe.

(b) Plan requirement

(1) In general

The Secretary may make a grant under this chapter on behalf of an Indian tribe for a fiscal year only if--

(A) the Indian tribe has submitted to the Secretary an Indian housing plan for such fiscal year under [section 4112](#) of this title; and

(B) the plan has been determined under [section 4113](#) of this title to comply with the requirements of [section 4112](#) of this title.

(2) Waiver

The Secretary may waive the applicability of the requirements under paragraph (1), in whole or in part, for a period of not more than 90 days, if the Secretary determines that an Indian tribe has not complied with, or is unable to comply with, those requirements due to exigent circumstances beyond the control of the Indian tribe.

(c) Local cooperation agreement

Notwithstanding any other provision of this chapter, grant amounts provided under this chapter on behalf of an Indian tribe may not be used for rental or lease-purchase homeownership units that are owned by the recipient for the tribe unless the governing body of the locality within which the property subject to the development activities to be assisted with the grant amounts is or will be situated has entered into an agreement with the recipient for the tribe providing for local cooperation required by the Secretary pursuant to this chapter. The Secretary may waive the requirements of this subsection and subsection (d) of this section if the recipient has made a good faith effort to fulfill the requirements of this subsection and subsection (d) of this section and agrees to make payments in lieu of taxes to the appropriate taxing authority in an amount consistent with the requirements of subsection (d)(2) of this section until such time as the matter of making such payments has been resolved in accordance with subsection (d) of this section.

(d) Exemption from taxation

Notwithstanding any other provision of this chapter, grant amounts provided under this chapter on behalf of an Indian tribe may not be used for affordable housing activities under this chapter for rental or lease-purchase dwelling units developed under the United States Housing Act of 1937 ([42 U.S.C. 1437 et seq.](#)) or with amounts provided under this chapter that are owned by the recipient for the tribe unless--

(1) such dwelling units (which, in the case of units in a multi-unit project, shall be exclusive of any portions of the project not developed under the United States Housing Act of 1937 [[42 U.S.C.A. § 1437 et seq.](#)] or with amounts provided under this chapter) are exempt from all real and personal property taxes levied or imposed by any State, tribe, city, county, or other political subdivision; and

(2) the recipient for the tribe makes annual payments of user fees to compensate such governments for the costs of providing governmental services, including police and fire protection, roads, water and sewerage systems, utilities systems and related facilities, or payments in lieu of taxes to such taxing authority, in an amount equal to the greater of \$150 per dwelling unit or 10 percent of the difference between the shelter rent and the utility cost, or such lesser amount as--

(A) is prescribed by State, tribal, or local law;

(B) is agreed to by the local governing body in the agreement under subsection (c) of this section; or

(C) the recipient and the local governing body agree that such user fees or payments in lieu of taxes shall not be made.

(e) Effect of failure to exempt from taxation

Notwithstanding subsection (d) of this section, a grant recipient that does not comply with the requirements under such subsection may receive a block grant under this chapter, but only if the tribe, State, city, county, or other political subdivision in which the affordable housing development is located contributes, in the form of cash or tax remission, the amount by which the taxes paid with respect to the development exceed the amounts prescribed in subsection (d)(2) of this section.

(f) Amount

Except as otherwise provided under this chapter, the amount of a grant under this section to a recipient for a fiscal year shall be--

(1) in the case of a recipient whose grant beneficiary is a single Indian tribe, the amount of the allocation under [section 4151](#) of this title for the Indian tribe; and

(2) in the case of a recipient whose grant beneficiary is more than 1 Indian tribe, the sum of the amounts of the allocations under [section 4151](#) of this title for each such Indian tribe.

(g) Use for affordable housing activities under plan

Except as provided in subsection (h) of this section and part B of subchapter II of this chapter, amounts provided under a grant under this section may be used only for affordable housing activities under subchapter II of this chapter that are consistent with an Indian housing plan approved under [section 4113](#) of this title.

(h) Administrative and planning expenses

The Secretary shall, by regulation, authorize each recipient to use a percentage of any grant amounts received under this chapter for comprehensive housing and community development planning activities and for any reasonable administrative and planning expenses of the recipient relating to carrying out this chapter and activities assisted with such amounts, which may include costs for salaries of individuals engaged in administering and managing affordable housing activities assisted with grant amounts provided under this chapter and expenses of preparing an Indian housing plan under [section 4112](#) of this title.

(i) Public-private partnerships

Each recipient shall make all reasonable efforts, consistent with the purposes of this chapter, to maximize participation by the private sector, including nonprofit organizations and for-profit entities, in implementing the approved Indian housing plan.

(j) Federal supply sources

For purposes of [section 501 of Title 40](#), on election by the applicable Indian tribe--

(1) each Indian tribe or tribally designated housing entity shall be considered to be an Executive agency in carrying out any program, service, or other activity under this chapter; and

(2) each Indian tribe or tribally designated housing entity and each employee of the Indian tribe or tribally designated housing entity shall have access to sources of supply on the same basis as employees of an Executive agency.

(k) Tribal preference in employment and contracting

Notwithstanding any other provision of law, with respect to any grant (or portion of a grant) made on behalf of an Indian tribe under this chapter that is intended to benefit 1 Indian tribe, the tribal employment and contract preference laws (including regulations and tribal ordinances) adopted by the Indian tribe that receives the benefit shall apply with respect to the administration of the grant (or portion of a grant).

§ 4112. Indian housing plans

(a) Plan submission

The Secretary shall provide--

(1)(A) for an Indian tribe to submit to the Secretary, by not later than 75 days before the beginning of each tribal program year, a 1-year housing plan for the Indian tribe; or

(B) for the tribally designated housing entity for the tribe to submit the plan as provided in subsection (c) of this section for the tribe; and

(2) for the review of such plans.

(b) 1-year plan requirement

(1) In general

A housing plan of an Indian tribe under this section shall--

(A) be in such form as the Secretary may prescribe; and

(B) contain the information described in paragraph (2).

(2) Required information

A housing plan shall include the following information with respect to the tribal program year for which assistance under this chapter is made available:

(A) Description of planned activities

A statement of planned activities, including--

(i) the types of household to receive assistance;

(ii) the types and levels of assistance to be provided;

(iii) the number of units planned to be produced;

(iv)(I) a description of any housing to be demolished or disposed of;

(II) a timetable for the demolition or disposition; and

(III) any other information required by the Secretary with respect to the demolition or disposition;

(v) a description of the manner in which the recipient will protect and maintain the viability of housing owned

and operated by the recipient that was developed under a contract between the Secretary and an Indian housing authority pursuant to the United States Housing Act of 1937 ([42 U.S.C. 1437 et seq.](#)); and

(vi) outcomes anticipated to be achieved by the recipient.

(B) Statement of needs

A statement of the housing needs of the low-income Indian families residing in the jurisdiction of the Indian tribe, and the means by which those needs will be addressed during the applicable period, including--

(i) a description of the estimated housing needs and the need for assistance for the low-income Indian families in the jurisdiction, including a description of the manner in which the geographical distribution of assistance is consistent with the geographical needs and needs for various categories of housing assistance; and

(ii) a description of the estimated housing needs for all Indian families in the jurisdiction.

(C) Financial resources

An operating budget for the recipient, in such form as the Secretary may prescribe, that includes--

(i) an identification and description of the financial resources reasonably available to the recipient to carry out the purposes of this chapter, including an explanation of the manner in which amounts made available will leverage additional resources; and

(ii) the uses to which those resources will be committed, including eligible and required affordable housing activities under subchapter II of this chapter and administrative expenses.

(D) Certification of compliance

Evidence of compliance with the requirements of this chapter, including, as appropriate--

(i) a certification that, in carrying out this chapter, the recipient will comply with the applicable provisions of title II of the Civil Rights Act of 1968 ([25 U.S.C. 1301 et seq.](#)) and other applicable Federal laws and regulations;

(ii) a certification that the recipient will maintain adequate insurance coverage for housing units that are owned and operated or assisted with grant amounts provided under this chapter, in compliance with such requirements as the Secretary may establish;

(iii) a certification that policies are in effect and are available for review by the Secretary and the public governing the eligibility, admission, and occupancy of families for housing assisted with grant amounts provided under this chapter;

(iv) a certification that policies are in effect and are available for review by the Secretary and the public governing rents and homebuyer payments charged, including the methods by which the rents or homebuyer payments are determined, for housing assisted with grant amounts provided under this chapter;

(v) a certification that policies are in effect and are available for review by the Secretary and the public governing the management and maintenance of housing assisted with grant amounts provided under this chapter;

and

(vi) a certification that the recipient will comply with [section 4114\(b\)](#) of this title.

(c) Participation of tribally designated housing entity

A plan under this section for an Indian tribe may be prepared and submitted on behalf of the tribe by the tribally designated housing entity for the tribe, but only if such plan contains a certification by the recognized tribal government of the grant beneficiary that such tribe--

(1) has had an opportunity to review the plan and has authorized the submission of the plan by the housing entity; or

(2) has delegated to such tribally designated housing entity the authority to submit a plan on behalf of the tribe without prior review by the tribe.

(d) Coordination of plans

A plan under this section may cover more than 1 Indian tribe, but only if the certification requirements under subsection (c) of this section are complied with by each such grant beneficiary covered.

(e) Regulations

The requirements relating to the contents of plans under this section shall be established by regulation, pursuant to [section 4116](#) of this title.

(f) Redesignated (e)

(g) Redesignated (f)

[§ 4113. Review of plans](#)

(a) Review and notice

(1) Review

The Secretary shall conduct a limited review of each Indian housing plan submitted to the Secretary to ensure that the plan complies with the requirements of [section 4112](#) of this title. The Secretary shall have the discretion to review a plan only to the extent that the Secretary considers review is necessary.

(2) Notice

The Secretary shall notify each Indian tribe for which a plan is submitted and any tribally designated housing entity for the tribe whether the plan complies with such requirements not later than 60 days after receiving the plan. If the Secretary does not notify the Indian tribe, as required under this subsection and subsection (b) of this section, the plan shall be considered, for purposes of this chapter, to have been determined to comply with the requirements under [section 4112](#) of this title and the tribe shall be considered to have been notified of compliance upon the expiration of such 60-day period.

(b) Notice of reasons for determination of noncompliance

If the Secretary determines that a plan, as submitted, does not comply with the requirements under [section 4112](#) of this title, the Secretary shall specify in the notice under subsection (a) of this section the reasons for the noncompliance and any modifications necessary for the plan to meet the requirements under [section 4112](#) of this title.

(c) Review

After submission of the Indian housing plan or any amendment or modification to the plan to the Secretary, to the extent that the Secretary considers such action to be necessary to make determinations under this subsection, the Secretary shall review the plan (including any amendments or modifications thereto) to determine whether the contents of the plan--

- (1) set forth the information required by [section 4112](#) of this title to be contained in an Indian housing plan;
- (2) are consistent with information and data available to the Secretary; and
- (3) are not prohibited by or inconsistent with any provision of this chapter or other applicable law.

If the Secretary determines that any of the appropriate certifications required under [section 4112\(c\)\(5\)](#) of this title are not included in the plan, the plan shall be deemed to be incomplete.

(d) Updates to plan

After a plan under [section 4112](#) of this title has been submitted for an Indian tribe for any tribal program year, the tribe may comply with the provisions of such section for any succeeding tribal program year by submitting only such information regarding such changes as may be necessary to update the plan previously submitted.

(e) Self-determined activities program

Notwithstanding any other provision of this section, the Secretary--

- (1) shall review the information included in an Indian housing plan pursuant to subsections (b)(4) and (c)(7) only to determine whether the information is included for purposes of compliance with the requirement under [section 4145a\(b\)\(2\)](#) of this title; and
- (2) may not approve or disapprove an Indian housing plan based on the content of the particular benefits, activities, or results included pursuant to subsections (b)(4) and (c)(7).

§ 4114. Treatment of program income and labor standards.

(a) Program income

(1) Authority to retain

Notwithstanding any other provision of this chapter, a recipient may retain any program income that is realized from any grant amounts under this chapter if--

(A) such income was realized after the initial disbursement of the grant amounts received by the recipient; and

(B) the recipient has agreed that it will utilize such income for housing related activities in accordance with this chapter.

(2) Prohibition of restricted access or reduction of grant

The Secretary may not restrict access to or reduce the grant amount for any Indian tribe based solely on--

(A) whether the recipient for the tribe retains program income under paragraph (1);

(B) the amount of any such program income retained;

(C) whether the recipient retains reserve amounts described in [section 4140](#) of this title; or

(D) whether the recipient has expended retained program income for housing-related activities.

(3) Exclusion of amounts

The Secretary may, by regulation, exclude from consideration as program income any amounts determined to be so small that compliance with the requirements of this subsection would create an unreasonable administrative burden on the recipient.

(4) Exclusion from program income of regular developer's fees for low-income housing tax credit projects

Notwithstanding any other provision of this chapter, any income derived from a regular and customary developer's fee for any project that receives a low-income housing tax credit under [section 42 of Title 26](#), and that is initially funded using a grant provided under this chapter, shall not be considered to be program income if the developer's fee is approved by the State housing credit agency.

(b) Labor standards

(1) In general

Any contract or agreement for assistance, sale, or lease pursuant to this chapter shall contain a provision requiring that not less than the wages prevailing in the locality, as determined or adopted (subsequent to a determination under applicable State, tribal, or local law) by the Secretary, shall be paid to all architects, technical engineers, draftsmen, and technicians employed in the development, and all maintenance laborers and mechanics employed in the operation, of the affordable housing project involved; and shall also contain a provision that not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to [sections 3141-3144](#), [3146](#), and [3147 of Title 40](#), shall be paid to all laborers and mechanics employed in the development of the affordable housing involved, and the Secretary shall require certification as to compliance with the provisions of this paragraph before making any payment under such contract or agreement.

(2) Exceptions

Paragraph (1) and the provisions relating to wages (pursuant to paragraph (1)) in any contract or agreement for assistance, sale, or lease pursuant to this chapter, shall not apply to any individual who receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered

and who is not otherwise employed at any time in the construction work.

(3) Application of tribal laws

Paragraph (1) shall not apply to any contract or agreement for assistance, sale, or lease pursuant to this chapter, if such contract or agreement is otherwise covered by one or more laws or regulations adopted by an Indian tribe that requires the payment of not less than prevailing wages, as determined by the Indian tribe.

§ 4115. Environmental review

(a) In general

(1) Release of funds

In order to ensure that the policies of the National Environmental Policy Act of 1969 [[42 U.S.C.A. § 4321 et seq.](#)] and other provisions of law that further the purposes of such Act (as specified in regulations issued by the Secretary) are most effectively implemented in connection with the expenditure of grant amounts provided under this chapter, and to ensure to the public undiminished protection of the environment, the Secretary, in lieu of the environmental protection procedures otherwise applicable, may by regulation provide for the release of amounts for particular projects to tribes which assume all of the responsibilities for environmental review, decisionmaking, and action pursuant to such Act, and such other provisions of law as the regulations of the Secretary specify, that would apply to the Secretary were the Secretary to undertake such projects as Federal projects.

(2) Regulations

(A) In general

The Secretary shall issue regulations to carry out this section only after consultation with the Council on Environmental Quality.

(B) Contents

The regulations issued under this paragraph shall--

- (i) provide for the monitoring of the environmental reviews performed under this section;
- (ii) in the discretion of the Secretary, facilitate training for the performance of such reviews; and
- (iii) provide for the suspension or termination of the assumption of responsibilities under this section.

(3) Effect on assumed responsibility

The duty of the Secretary under paragraph (2)(B) shall not be construed to limit or reduce any responsibility assumed by a recipient of grant amounts with respect to any particular release of funds.

(b) Procedure

The Secretary shall approve the release of funds subject to the procedures authorized by this section only if, not less

than 15 days prior to such approval and prior to any commitment of funds to such projects, the tribe has submitted to the Secretary a request for such release accompanied by a certification that meets the requirements of subsection (c) of this section. The approval of the Secretary of any such certification shall be deemed to satisfy the responsibilities of the Secretary under the National Environmental Policy Act of 1969 [[42 U.S.C.A § 4321 et seq.](#)] and such other provisions of law as the regulations of the Secretary specify insofar as those responsibilities relate to the releases of funds for projects to be carried out pursuant thereto that are covered by such certification.

(c) Certification

A certification under the procedures authorized by this section shall--

- (1) be in a form acceptable to the Secretary;
- (2) be executed by the chief executive officer or other officer of the tribe under this chapter qualified under regulations of the Secretary;
- (3) specify that the tribe has fully carried out its responsibilities as described under subsection (a) of this section; and
- (4) specify that the certifying officer--
 - (A) consents to assume the status of a responsible Federal official under the National Environmental Policy Act of 1969 [[42 U.S.C.A. § 4321 et seq.](#)] and each provision of law specified in regulations issued by the Secretary insofar as the provisions of such Act or such other provisions of law apply pursuant to subsection (a) of this section; and
 - (B) is authorized and consents on behalf of the tribe and such officer to accept the jurisdiction of the Federal courts for the purpose of enforcement of the responsibilities of the certifying officer as such an official.

(d) Environmental compliance

The Secretary may waive the requirements under this section if the Secretary determines that a failure on the part of a recipient to comply with provisions of this section--

- (1) will not frustrate the goals of the National Environmental Policy Act of 1969 ([42 U.S.C. 4321 et seq.](#)) or any other provision of law that furthers the goals of that Act;
- (2) does not threaten the health or safety of the community involved by posing an immediate or long-term hazard to residents of that community;
- (3) is a result of inadvertent error, including an incorrect or incomplete certification provided under subsection (c)(1) of this section; and
- (4) may be corrected through the sole action of the recipient.

[§ 4116. Regulations](#)

(a) Transition requirements

(1) In general

Not later than 90 days after October 26, 1996, the Secretary shall, by notice issued in the Federal Register, establish any requirements necessary to provide for the transition (upon the effectiveness of this chapter and the amendments made by this chapter) from the provision of assistance for Indian tribes and Indian housing authorities under the United States Housing Act of 1937 [[42 U.S.C.A. § 1437 et seq.](#)] and other related provisions of law to the provision of assistance in accordance with this chapter and the amendments made by this chapter.

(2) Public comments; general notice of proposed rulemaking

The notice issued under paragraph (1) shall--

(A) invite public comments regarding such transition requirements and final regulations to carry out this chapter; and

(B) include a general notice of proposed rulemaking (for purposes of [section 564\(a\) of Title 5](#)) of the final regulations under subsection (b) of this section.

(b) Final regulations

(1) Timing

The Secretary shall issue final regulations necessary to carry out this chapter not later than September 1, 1997, and such regulations shall take effect not later than the effective date of this chapter.

(2) Negotiated rulemaking procedure

(A) In general

Notwithstanding [sections 563\(a\)](#) and [565\(a\) of Title 5](#), all regulations required under this chapter, including any regulations that may be required pursuant to amendments made to this chapter after October 26, 1996, shall be issued according to a negotiated rulemaking procedure under subchapter III of chapter 5 of Title 5.

(B) Committee

(i) In general

Not later than 180 days after the date of enactment of the Native American Housing Assistance and Self-Determination Reauthorization Act of 2008 and any other Act to reauthorize this Act, the Secretary shall establish a negotiated rulemaking committee, in accordance with the procedures under that subchapter, for the development of proposed regulations under subparagraph (A).

(ii) Adaptation

In establishing the negotiated rulemaking committee, the Secretary shall--

(I) adapt the procedures under the subchapter described in clause (i) to the unique government-to-government relationship between the Indian tribes and the United States, and shall ensure that the

membership of the committee include only representatives of the Federal Government and of geographically diverse small, medium, and large Indian tribes; and

(II) shall not preclude the participation of tribally designated housing entities should tribes elect to be represented by such entities.

(C) Subsequent negotiated rulemaking

The Secretary shall--

(i) initiate a negotiated rulemaking in accordance with this section by not later than 90 days after the date of enactment of the Native American Housing Assistance and Self-Determination Reauthorization Act of 2008 and any other Act to reauthorize this Act; and

(ii) promulgate regulations pursuant to this section by not later than 2 years after the date of enactment of the Native American Housing Assistance and Self-Determination Reauthorization Act of 2008 and any other Act to reauthorize this Act.

(D) Review

Not less frequently than once every 7 years, the Secretary, in consultation with Indian tribes, shall review the regulations promulgated pursuant to this section in effect on the date on which the review is conducted.

(c) Effective date

This section shall take effect on October 26, 1996.

§ 4117. Authorization of appropriations

There are authorized to be appropriated for grants under this subchapter such sums as may be necessary for each of fiscal years 2009 through 2013. This section shall take effect on October 26, 1996.

§ 4131. National objectives and eligible families

(a) Primary objective

The national objectives of this chapter are--

(1) to assist and promote affordable housing activities to develop, maintain, and operate affordable housing in safe and healthy environments on Indian reservations and in other Indian areas for occupancy by low-income Indian families;

(2) to ensure better access to private mortgage markets for Indian tribes and their members and to promote self-sufficiency of Indian tribes and their members;

(3) to coordinate activities to provide housing for Indian tribes and their members with Federal, State, and local activities to further economic and community development for Indian tribes and their members;

(4) to plan for and integrate infrastructure resources for Indian tribes with housing development for tribes; and

(5) to promote the development of private capital markets in Indian country and to allow such markets to operate and grow, thereby benefiting Indian communities.

(b) Eligible families

(1) In general

Except as provided under paragraphs (2) and (4), and except with respect to loan guarantees under the demonstration program under subchapter VI of this chapter, assistance under eligible housing activities under this chapter shall be limited to low-income Indian families on Indian reservations and other Indian areas.

(2) Exception to low-income requirement

(A) Exception to requirement

Notwithstanding paragraph (1), a recipient may provide housing or housing assistance through affordable housing activities for which a grant is provided under this chapter to any family that is not a low-income family, to the extent that the Secretary approves the activities due to a need for housing for those families that cannot reasonably be met without that assistance.

(B) Limits

The Secretary shall establish limits on the amount of assistance that may be provided under this chapter for activities for families who are not low-income families.

(3) Essential families

Notwithstanding paragraph (1), a recipient may provide housing or housing assistance provided through affordable housing activities assisted with grant amounts under this chapter for a family on an Indian reservation or other Indian area if the recipient determines that the presence of the family on the Indian reservation or other Indian area is essential to the well-being of Indian families and the need for housing for the family cannot reasonably be met without such assistance.

(4) Law enforcement officers

A recipient may provide housing or housing assistance provided through affordable housing activities assisted with grant amounts under this chapter for a law enforcement officer on an Indian reservation or other Indian area, if--

(A) the officer--

(i) is employed on a full-time basis by the Federal Government or a State, county, or other unit of local government, or lawfully recognized tribal government; and

(ii) in implementing such full-time employment, is sworn to uphold, and make arrests for, violations of Federal, State, county, or tribal law; and

(B) the recipient determines that the presence of the law enforcement officer on the Indian reservation or other Indian area may deter crime.

(5) Law enforcement officers

Notwithstanding paragraph (1), a recipient may provide housing or housing assistance provided through affordable housing activities assisted with grant amounts under this chapter to a law enforcement officer on the reservation or other Indian area, who is employed full-time by a Federal, State, county or tribal government, and in implementing such full-time employment is sworn to uphold, and make arrests for violations of Federal, State, county or tribal law, if the recipient determines that the presence of the law enforcement officer on the Indian reservation or other Indian area may deter crime.

(6) [\[FN1\]](#) Preference for tribal members and other Indian families

The Indian housing plan for an Indian tribe may require preference, for housing or housing assistance provided through affordable housing activities assisted with grant amounts provided under this chapter on behalf of such tribe, to be given (to the extent practicable) to Indian families who are members of such tribe, or to other Indian families. In any case in which the applicable Indian housing plan for an Indian tribe provides for preference under this paragraph, the recipient for the tribe shall ensure that housing activities that are assisted with grant amounts under this chapter for such tribe are subject to such preference.

(6) [\[FN1\]](#) Exemption

Title VI of the Civil Rights Act of 1964 [\[42 U.S.C.A. § 2000d et seq.\]](#) and title VIII of the Civil Rights Act of 1968 [\[42 U.S.C.A. § 3601 et seq.\]](#) shall not apply to actions by federally recognized tribes and the tribally designated housing entities of those tribes under this chapter.

[\[FN1\]](#) So in original. Two pars. (6) have been enacted.

§ 4132. Eligible affordable housing activities

Affordable housing activities under this subchapter are activities, in accordance with the requirements of this subchapter, to develop, operate, maintain, or support affordable housing for rental or homeownership, or to provide housing services with respect to affordable housing, through the following activities:

(1) Indian housing assistance

The provision of modernization or operating assistance for housing previously developed or operated pursuant to a contract between the Secretary and an Indian housing authority.

(2) Development

The acquisition, new construction, reconstruction, or moderate or substantial rehabilitation of affordable housing, which may include real property acquisition, site improvement, development and rehabilitation of utilities, necessary infrastructure, and utility services, conversion, demolition, financing, administration and planning, improvement to achieve greater energy efficiency, mold remediation, and other related activities.

(3) Housing services

The provision of housing-related services for affordable housing, such as housing counseling in connection with rental or homeownership assistance, establishment and support of resident organizations and resident management corporations, energy auditing, activities related to the provision of self-sufficiency and other services, and other services related to assisting owners, tenants, contractors, and other entities, participating or seeking to participate in other housing activities assisted pursuant to this section.

(4) Housing management services

The provision of management services for affordable housing, including preparation of work specifications, loan processing, inspections, tenant selection, management of tenant-based rental assistance, the costs of operation and maintenance of units developed with funds provided under this chapter, and management of affordable housing projects.

(5) Crime prevention and safety activities

The provision of safety, security, and law enforcement measures and activities appropriate to protect residents of affordable housing from crime.

(6) Model activities

Housing activities under model programs that are designed to carry out the purposes of this chapter and are specifically approved by the Secretary as appropriate for such purpose.

(7) Community development demonstration project

(A) In general

Consistent with principles of Indian self-determination and the findings of this chapter, the Secretary shall conduct and submit to Congress a study of the feasibility of establishing a demonstration project in which Indian tribes, tribal organizations, or tribal consortia are authorized to expend amounts received pursuant to the Native American Housing Assistance and Self-Determination Reauthorization Act of 2002 in order to design, implement, and operate community development demonstration projects.

(B) Study

Not later than 1 year after November 13, 2002, the Secretary shall submit the study conducted under subparagraph (A) to the Committee on Banking, Housing, and Urban Affairs and the Committee on Indian Affairs of the Senate, and the Committee on Financial Services and the Committee on Resources of the House of Representatives.

(8) Self-Determination Act demonstration project

(A) In general

Consistent with the provisions of the Indian Self-Determination and Education Assistance Act ([25 U.S.C. 450 et seq.](#)), the Secretary shall conduct and submit to Congress a study of the feasibility of establishing a demonstration project in which Indian tribes and tribal organizations are authorized to receive assistance in a manner that maximizes tribal authority and decision-making in the design and implementation of Federal housing and related activity funding.

(B) Study

Not later than 1 year after November 13, 2002, the Secretary shall submit the study conducted under subparagraph (A) to the Committee on Banking, Housing, and Urban Affairs and the Committee on Indian Affairs of the Senate, and the Committee on Financial Services and the Committee on Resources of the House of Representatives.

(9) Reserve accounts

(A) In general

Subject to subparagraph (B), the deposit of amounts, including grant amounts under [section 4111](#) of this title, in a reserve account established for an Indian tribe only for the purpose of accumulating amounts for administration and planning relating to affordable housing activities under this section, in accordance with the Indian housing plan of the Indian tribe.

(B) Maximum amount

A reserve account established under subparagraph (A) shall consist of not more than an amount equal to $\frac{1}{4}$ of the 5-year average of the annual amount used by a recipient for administration and planning under paragraph (2).

§ 4133. Program requirements

(a) Rents

(1) Establishment

Subject to paragraph (2), each recipient shall develop written policies governing rents and homebuyer payments charged for dwelling units assisted under this chapter, including the methods by which such rents and homebuyer payments are determined.

(2) Maximum rent

In the case of any low-income family residing in a dwelling unit assisted with grant amounts under this chapter, the monthly rent or homebuyer payment (as applicable) for such dwelling unit may not exceed 30 percent of the monthly adjusted income of such family.

(b) Maintenance and efficient operation

Each recipient who owns or operates (or is responsible for funding any entity that owns or operates) housing developed or operated pursuant to a contract between the Secretary and an Indian housing authority pursuant to the United States Housing Act of 1937 [[42 U.S.C.A. § 1437 et seq.](#)] shall, using amounts of any grants received under this chapter, reserve and use for operating assistance under [section 4132\(1\)](#) of this title such amounts as may be necessary to provide for the continued maintenance and efficient operation of such housing. This subsection may not be construed to prevent any recipient (or entity funded by a recipient) from demolishing or disposing of Indian housing referred to in this subsection, pursuant to regulations established by the Secretary.

(c) Insurance coverage

Each recipient shall maintain adequate insurance coverage for housing units that are owned or operated or assisted

with grant amounts provided under this chapter.

(d) Eligibility for admission

Each recipient shall develop written policies governing the eligibility, admission, and occupancy of families for housing assisted with grant amounts provided under this chapter.

(e) Management and maintenance

Each recipient shall develop policies governing the management and maintenance of housing assisted with grant amounts under this chapter.

(f) Use of grant amounts over extended periods

(1) In general

To the extent that the Indian housing plan for an Indian tribe provides for the use of amounts of a grant under [section 4111](#) of this title for a period of more than 1 fiscal year, or for affordable housing activities for which the amounts will be committed for use or expended during a subsequent fiscal year, the Secretary shall not require those amounts to be used or committed for use at any time earlier than otherwise provided for in the Indian housing plan.

(2) Carryover

Any amount of a grant provided to an Indian tribe under [section 4111](#) of this title for a fiscal year that is not used by the Indian tribe during that fiscal year may be used by the Indian tribe during any subsequent fiscal year.

(g) De minimis exemption for procurement of goods and services

Notwithstanding any other provision of law, a recipient shall not be required to act in accordance with any otherwise applicable competitive procurement rule or procedure with respect to the procurement, using a grant provided under this chapter, of goods and services the value of which is less than \$5,000.

[§ 4134. Types of investments](#)

(a) In general

Subject to [section 4133](#) of this title and the Indian housing plan for an Indian tribe, the recipient for that tribe shall have--

(1) the discretion to use grant amounts for affordable housing activities through equity investments, interest-bearing loans or advances, noninterest-bearing loans or advances, interest subsidies, leveraging of private investments, or any other form of assistance that the Secretary has determined to be consistent with the purposes of this chapter; and

(2) the right to establish the terms of assistance.

(b) Investments

A recipient may invest grant amounts for the purposes of carrying out affordable housing activities in investment

securities and other obligations as approved by the Secretary.

§ 4135. Low-income requirement and income targeting

(a) In general

Housing shall qualify as affordable housing for purposes of this chapter only if--

(1) each dwelling unit in the housing--

(A) in the case of rental housing, is made available for occupancy only by a family that is a low-income family at the time of their initial occupancy of such unit;

(B) in the case of a contract to purchase existing housing, is made available for purchase only by a family that is a low-income family at the time of purchase;

(C) in the case of a lease-purchase agreement for existing housing or for housing to be constructed, is made available for lease-purchase only by a family that is a low-income family at the time the agreement is entered into; and

(D) in the case of a contract to purchase housing to be constructed, is made available for purchase only by a family that is a low-income family at the time the contract is entered into; and

(2) except for housing assisted under [section 1437bb of Title 42](#) (as in effect before the date of the effectiveness of this chapter), each dwelling unit in the housing will remain affordable, according to binding commitments satisfactory to the Secretary, for the remaining useful life of the property (as determined by the Secretary) without regard to the term of the mortgage or to transfer of ownership, or for such other period that the Secretary determines is the longest feasible period of time consistent with sound economics and the purposes of this chapter, except upon a foreclosure by a lender (or upon other transfer in lieu of foreclosure) if such action--

(A) recognizes any contractual or legal rights of public agencies, nonprofit sponsors, or others to take actions that would avoid termination of low-income affordability in the case of foreclosure or transfer in lieu of foreclosure; and

(B) is not for the purpose of avoiding low-income affordability restrictions, as determined by the Secretary.

(b) Exception

Notwithstanding subsection (a) of this section, housing assisted pursuant to [section 4131\(b\)\(2\)](#) of this title shall be considered affordable housing for purposes of this chapter.

(c) Applicability

The provisions of paragraph (2) of subsection (a) regarding binding commitments for the remaining useful life of property shall not apply to a family or household member who subsequently takes ownership of a homeownership unit.

§ 4136. Repealed. Pub.L. 106-568, Title X, § 1003(k)(2), Dec. 27, 2000, 114 Stat. 2930; Pub.L. 106-569, Title V, § 503(j)(2), Dec. 27, 2000, 114 Stat. 2966

§ 4137. Lease requirements and tenant selection

(a) Leases

Except to the extent otherwise provided by or inconsistent with tribal law, in renting dwelling units in affordable housing assisted with grant amounts provided under this chapter, the owner or manager of the housing shall utilize leases that--

- (1) do not contain unreasonable terms and conditions;
- (2) require the owner or manager to maintain the housing in compliance with applicable housing codes and quality standards;
- (3) require the owner or manager to give adequate written notice of termination of the lease, which shall be the period of time required under State, tribal, or local law;
- (4) specify that, with respect to any notice of eviction or termination, notwithstanding any State, tribal, or local law, a resident shall be informed of the opportunity, prior to any hearing or trial, to examine any relevant documents, records, or regulations directly related to the eviction or termination;
- (5) require that the owner or manager may not terminate the tenancy, during the term of the lease, except for serious or repeated violation of the terms or conditions of the lease, violation of applicable Federal, State, tribal, or local law, or for other good cause; and
- (6) provide that the owner or manager may terminate the tenancy of a resident for any activity, engaged in by the resident, any member of the household of the resident, or any guest or other person under the control of the resident, that--
 - (A) threatens the health or safety of, or right to peaceful enjoyment of the premises by, other residents or employees of the owner or manager of the housing;
 - (B) threatens the health or safety of, or right to peaceful enjoyment of their premises by, persons residing in the immediate vicinity of the premises; or
 - (C) is criminal activity (including drug-related criminal activity) on or off the premises.

(b) Tenant and homebuyer selection

The owner or manager of affordable rental housing assisted with grant amounts provided under this chapter shall adopt and utilize written tenant and homebuyer selection policies and criteria that--

- (1) are consistent with the purpose of providing housing for low-income families;
- (2) are reasonably related to program eligibility and the ability of the applicant to perform the obligations of the lease; and
- (3) provide for--

(A) the selection of tenants and homebuyers from a written waiting list in accordance with the policies and goals set forth in the Indian housing plan for the tribe that is the grant beneficiary of such grant amounts; and

(B) the prompt notification in writing to any rejected applicant of that rejection and the grounds for that rejection.

§ 4138. Availability of records

(a) Provision of information

Notwithstanding any other provision of law, except as provided in subsection (b) of this section, the National Crime Information Center, police departments, and other law enforcement agencies shall, upon request, provide information to Indian tribes or tribally designated housing entities regarding the criminal conviction records of applicants for employment, and of adult applicants for, or tenants of, housing assisted with grant amounts provided to such tribe or entity under this chapter for purposes of applicant screening, lease enforcement, and eviction.

(b) Exception

A law enforcement agency described in subsection (a) of this section shall provide information under this paragraph relating to any criminal conviction of a juvenile only to the extent that the release of such information is authorized under the law of the applicable State, tribe, or locality.

(c) Confidentiality

An Indian tribe or tribally designated housing entity receiving information under this section may use such information only for the purposes provided in this section and such information may not be disclosed to any person who is not an officer, employee, or authorized representative of the tribe or entity or the owner of housing assisted under this chapter, and who has a job-related need to have access to the information for the purposes under this section. For judicial eviction proceedings, disclosures may be made to the extent necessary. The Secretary shall, by regulation, establish procedures necessary to ensure that information provided under this section to any tribe or entity is used, and confidentiality is maintained, as required under this section.

§ 4139. Noncompliance with affordable housing requirement

If a recipient uses grant amounts to provide affordable housing under this subchapter, and at any time during the useful life of the housing the recipient does not comply with the requirement under [section 4135\(a\)\(2\)](#) of this title, the Secretary shall take appropriate action under [section 4161\(a\)](#) of this title.

§ 4140. Continued use of amounts for affordable housing

Any funds for programs for low-income housing under the United States Housing Act of 1937 [[42 U.S.C.A. § 1437 et seq.](#)] that, on the date of the applicability of this chapter to an Indian tribe, are owned by, or in the possession or under the control of, the Indian housing authority for the tribe, including all reserves not otherwise obligated, shall be considered assistance under this chapter and subject to the provisions of this chapter relating to use of such assistance.

§ 4145. Purpose

The purpose of this part is to establish a program for self-determined housing activities for the tribal communities to

provide Indian tribes with the flexibility to use a portion of the grant amounts under [section 4111](#) of this title for the Indian tribe in manners that are wholly self-determined by the Indian tribe for housing activities involving construction, acquisition, rehabilitation, or infrastructure relating to housing activities or housing that will benefit the community served by the Indian tribe.

§ 4145a. Program authority

(a) Definition of qualifying Indian tribe

In this section, the term “qualifying Indian tribe” means, with respect to a fiscal year, an Indian tribe or tribally designated housing entity--

- (1)** to or on behalf of which a grant is made under [section 4111](#) of this title;
- (2)** that has complied with the requirements of [section 4112\(b\)](#)(6) of this title; and
- (3)** that, during the preceding 3-fiscal-year period, has no unresolved significant and material audit findings or exceptions, as demonstrated in--
 - (A)** the annual audits of that period completed under chapter 75 of Title 31 (commonly known as the “Single Audit Act”); or
 - (B)** an independent financial audit prepared in accordance with generally accepted auditing principles.

(b) Authority

Under the program under this part, for each of fiscal years 2009 through 2013, the recipient for each qualifying Indian tribe may use the amounts specified in subsection (c) in accordance with this part.

(c) Amounts

With respect to a fiscal year and a recipient, the amounts referred to in subsection (b) are amounts from any grant provided under [section 4111](#) of this title to the recipient for the fiscal year, as determined by the recipient, but in no case exceeding the lesser of--

- (1)** an amount equal to 20 percent of the total grant amount for the recipient for that fiscal year; and
- (2)** \$2,000,000.

§ 4145b. Use of amounts for housing activities

(a) Eligible housing activities

Any amounts made available for use under this part by a recipient for an Indian tribe shall be used only for housing activities, as selected at the discretion of the recipient and described in the Indian housing plan for the Indian tribe pursuant to [section 4112\(b\)](#)(6) of this title, for the construction, acquisition, or rehabilitation of housing or infrastructure in accordance with [section 4132](#) of this title to provide a benefit to families described in [section 4131\(b\)\(1\)](#) of this title.

(b) Prohibition on certain activities

Amounts made available for use under this part may not be used for commercial or economic development.

§ 4145c. Inapplicability of other provisions

(a) In general

Except as otherwise specifically provided in this chapter, subchapter I of this chapter, part A of subchapter II of this chapter, and subchapters III through VIII of this chapter shall not apply to--

- (1) the program under this part; or
- (2) amounts made available in accordance with this part.

(b) Applicable provisions

The following provisions of subchapters I through VIII of this chapter shall apply to the program under this part and amounts made available in accordance with this part:

- (1) [Section 4111\(c\)](#) of this title (relating to local cooperation agreements).
- (2) [Subsections \(d\) and \(e\) of section 4111](#) of this title (relating to tax exemption).
- (3) [Section 4111\(j\)](#) of this title (relating to Federal supply sources).
- (4) [Section 4111\(k\)](#) of this title (relating to tribal preference in employment and contracting).
- (5) [Section 4112\(b\)\(4\)](#) of this title (relating to certification of compliance).
- (6) [Section 4114](#) of this title (relating to treatment of program income and labor standards).
- (7) [Section 4115](#) of this title (relating to environmental review).
- (8) [Section 4131\(b\)](#) of this title (relating to eligible families).
- (9) [Section 4133\(c\)](#) of this title (relating to insurance coverage).
- (10) [Section 4133\(g\)](#) of this title (relating to a de minimis exemption for procurement of goods and services).
- (11) Section 206 (relating to treatment of funds).
- (12) [Section 4139](#) of this title (relating to noncompliance with affordable housing requirement).
- (13) [Section 4161](#) of this title (relating to remedies for noncompliance).

(14) [Section 4168](#) of this title (relating to public availability of information).

(15) [Section 4211](#) of this title (relating to 50-year leasehold interests in trust or restricted lands for housing purposes).

§ 4145d. Review and report

(a) Review

During calendar year 2011, the Secretary shall conduct a review of the results achieved by the program under this part to determine--

- (1) the housing constructed, acquired, or rehabilitated under the program;
- (2) the effects of the housing described in paragraph (1) on costs to low-income families of affordable housing;
- (3) the effectiveness of each recipient in achieving the results intended to be achieved, as described in the Indian housing plan for the Indian tribe; and
- (4) the need for, and effectiveness of, extending the duration of the program and increasing the amount of grants under [section 4111](#) of this title that may be used under the program.

(b) Report

Not later than December 31, 2011, the Secretary shall submit to Congress a report describing the information obtained pursuant to the review under subsection (a) (including any conclusions and recommendations of the Secretary with respect to the program under this part), including--

- (1) recommendations regarding extension of the program for subsequent fiscal years and increasing the amounts under [section 4145a\(c\)](#) of this title that may be used under the program; and
- (2) recommendations for--
 - (A)(i) specific Indian tribes or recipients that should be prohibited from participating in the program for failure to achieve results; and
 - (ii) the period for which such a prohibition should remain in effect; or
 - (B) standards and procedures by which Indian tribes or recipients may be prohibited from participating in the program for failure to achieve results.

(c) Provision of information to Secretary

Notwithstanding any other provision of this chapter, recipients participating in the program under this part shall provide such information to the Secretary as the Secretary may request, in sufficient detail and in a timely manner sufficient to ensure that the review and report required by this section is accomplished in a timely manner.

§ 4151. Annual allocation

For each fiscal year, the Secretary shall allocate any amounts made available for assistance under this chapter for the fiscal year, in accordance with the formula established pursuant to [section 4152](#) of this title, among Indian tribes that comply with the requirements under this chapter for a grant under this chapter.

§ 4152. Allocation formula

(a) Establishment

(1) In general

The Secretary shall, by regulations issued not later than the expiration of the 12-month period beginning on October 26, 1996, in the manner provided under [section 4116](#) of this title, establish a formula to provide for allocating amounts available for a fiscal year for block grants under this chapter among Indian tribes in accordance with the requirements of this section.

(2) Study of need data

(A) In general

The Secretary shall enter into a contract with an organization with expertise in housing and other demographic data collection methodologies under which the organization, in consultation with Indian tribes and Indian organizations, shall--

- (i)** assess existing data sources, including alternatives to the decennial census, for use in evaluating the factors for determination of need described in subsection (b); and
- (ii)** develop and recommend methodologies for collecting data on any of those factors, including formula area, in any case in which existing data is determined to be insufficient or inadequate, or fails to satisfy the requirements of this chapter.

(B) Authorization of appropriations

There are authorized to be appropriated such sums as are necessary to carry out this section, to remain available until expended.

(b) Factors for determination of need

The formula shall be based on factors that reflect the need of the Indian tribes and the Indian areas of the tribes for assistance for affordable housing activities, including the following factors:

(1)(A) The number of low-income housing dwelling units developed under the United States Housing Act of 1937 ([42 U.S.C. 1437 et seq.](#)), pursuant to a contract between an Indian housing authority for the tribe and the Secretary, that are owned or operated by a recipient on the October 1 of the calendar year immediately preceding the year for which funds are provided, subject to the condition that such a unit shall not be considered to be a low-income housing dwelling unit for purposes of this section if--

- (i)** the recipient ceases to possess the legal right to own, operate, or maintain the unit; or

(ii) the unit is lost to the recipient by conveyance, demolition, or other means.

(B) If the unit is a homeownership unit not conveyed within 25 years from the date of full availability, the recipient shall not be considered to have lost the legal right to own, operate, or maintain the unit if the unit has not been conveyed to the homebuyer for reasons beyond the control of the recipient.

(C) If the unit is demolished and the recipient rebuilds the unit within 1 year of demolition of the unit, the unit may continue to be considered a low-income housing dwelling unit for the purpose of this paragraph.

(D) In this paragraph, the term “reasons beyond the control of the recipient” means, after making reasonable efforts, there remain--

(i) delays in obtaining or the absence of title status reports;

(ii) incorrect or inadequate legal descriptions or other legal documentation necessary for conveyance;

(iii) clouds on title due to probate or intestacy or other court proceedings; or

(iv) any other legal impediment.

(E) Subparagraphs (A) through (D) shall not apply to any claim arising from a formula current assisted stock calculation or count involving an Indian housing block grant allocation for any fiscal year through fiscal year 2008, if a civil action relating to the claim is filed by not later than 45 days after October 14, 2008.

(2) The extent of poverty and economic distress and the number of Indian families within Indian areas of the tribe.

(3) Other objectively measurable conditions as the Secretary and the Indian tribes may specify.

(c) Other factors for consideration

In establishing the formula, the Secretary shall consider--

(1) the relative administrative capacities and other challenges faced by the recipient, including, but not limited to geographic distribution within the Indian area and technical capacity; and

(2) the extent to which terminations of assistance under subchapter V of this chapter will affect funding available to State recognized tribes.

(d) Funding for public housing operation and modernization

(1) Full funding

(A) In general

Except with respect to an Indian tribe described in subparagraph (B), the formula shall provide that, if, in any fiscal year, the total amount made available for assistance under this chapter is equal to or greater than the total amount made available for fiscal year 1996 for assistance for the operation and modernization of public housing

developed or operated pursuant to a contract between the Secretary and an Indian housing authority pursuant to the United States Housing Act of 1937 [[42 U.S.C.A. § 1437 et seq.](#)], the amount provided for such fiscal year for each Indian tribe for which such operating or modernization assistance was provided for fiscal year 1996 shall not be less than the total amount of such operating and modernization assistance provided for fiscal year 1996 for such tribe.

(B) Certain Indian tribes

With respect to fiscal year 2001 and each fiscal year thereafter, for any Indian tribe with an Indian housing authority that owns or operates fewer than 250 public housing units, the formula shall provide that if the amount provided for a fiscal year in which the total amount made available for assistance under this chapter is equal to or greater than the amount made available for fiscal year 1996 for assistance for the operation and modernization of the public housing referred to in subparagraph (A), then the amount provided to that Indian tribe as modernization assistance shall be equal to the average annual amount of funds provided to the Indian tribe (other than funds provided as emergency assistance) under the assistance program under section 14 of the United States Housing Act of 1937 ([42 U.S.C. 1437l](#)) for the period beginning with fiscal year 1992 and ending with fiscal year 1997.

(2) Partial funding

The formula shall provide that, if, in any fiscal year, the total amount made available for assistance under this chapter is less than the total amount made available for fiscal year 1996 for assistance for the operation and modernization of public housing developed or operated pursuant to a contract between the Secretary and an Indian housing authority pursuant to the United States Housing Act of 1937 [[42 U.S.C.A. § 1437 et seq.](#)], the amount provided for such fiscal year for each Indian tribe for which such operating or modernization assistance was provided for fiscal year 1996 shall not be less than the amount that bears the same ratio to the total amount available for assistance under this chapter for such fiscal year that the amount of operating and modernization assistance provided for the tribe for fiscal year 1996 bears to the total amount made available for fiscal year 1996 for assistance for the operation and modernization of such public housing.

(e) Effective date

This section shall take effect on October 26, 1996.

[§ 4161. Remedies for noncompliance](#)

(a) Actions by Secretary affecting grant amounts

(1) In general

Except as provided in subsection (b) of this section, if the Secretary finds after reasonable notice and opportunity for hearing that a recipient of assistance under this chapter has failed to comply substantially with any provision of this chapter, the Secretary shall--

(A) terminate payments under this chapter to the recipient;

(B) reduce payments under this chapter to the recipient by an amount equal to the amount of such payments that were not expended in accordance with this chapter;

(C) limit the availability of payments under this chapter to programs, projects, or activities not affected by such

failure to comply; or

(D) in the case of noncompliance described in [section 4162\(b\)](#) of this title, provide a replacement tribally designated housing entity for the recipient, under [section 4162](#) of this title.

(2) Substantial noncompliance

The failure of a recipient to comply with the requirements of [section 4152\(b\)\(1\)](#) of this title regarding the reporting of low-income dwelling units shall not, in itself, be considered to be substantial noncompliance for purposes of this subchapter.

(3) Continuance of actions

If the Secretary takes an action under subparagraph (A), (B), or (C) of paragraph (1) the Secretary shall continue such action until the Secretary determines that the failure to comply has ceased.

(4) Exception for certain actions

(A) In general

Notwithstanding any other provision of this subsection, if the Secretary makes a determination that the failure of a recipient of assistance under this chapter to comply substantially with any material provision (as that term is defined by the Secretary) of this chapter is resulting, and would continue to result, in a continuing expenditure of Federal funds in a manner that is not authorized by law, the Secretary may take an action described in paragraph (1)(C) before conducting a hearing.

(B) Procedural requirement

If the Secretary takes an action described in subparagraph (A), the Secretary shall--

- (i) provide notice to the recipient at the time that the Secretary takes that action; and
- (ii) conduct a hearing not later than 60 days after the date on which the Secretary provides notice under clause (i).

(C) Determination

Upon completion of a hearing under this paragraph, the Secretary shall make a determination regarding whether to continue taking the action that is the subject of the hearing, or take another action under this subsection.

(b) Noncompliance because of technical incapacity

(1) In general

If the Secretary makes a finding under subsection (a) of this section, but determines that the failure to comply substantially with the provisions of this chapter--

- (A) is not a pattern or practice of activities constituting willful noncompliance, and

(B) is a result of the limited capability or capacity of the recipient,

the Secretary may provide technical assistance for the recipient (directly or indirectly) that is designed to increase the capability and capacity of the recipient to administer assistance provided under this chapter in compliance with the requirements under this chapter, if the recipient enters into a performance agreement with the Secretary that specifies the compliance objectives that the recipient will be required to achieve by the termination date of the performance agreement.

(2) Performance agreement

The period of a performance agreement described in paragraph (1) shall be for 1 year.

(3) Review

Upon the termination of a performance agreement entered into under paragraph (1), the Secretary shall review the performance of the recipient that is a party to the agreement.

(4) Effect of review

If, on the basis of a review under paragraph (3), the Secretary determines that the recipient--

(A) has made a good faith effort to meet the compliance objectives specified in the agreement, the Secretary may enter into an additional performance agreement for the period specified in paragraph (2); and

(B) has failed to make a good faith effort to meet applicable compliance objectives, the Secretary shall determine the recipient to have failed to comply substantially with this chapter, and the recipient shall be subject to an action under subsection (a) of this section.

(c) Referral for civil action

(1) Authority

In lieu of, or in addition to, any action authorized by subsection (a) of this section, if the Secretary has reason to believe that a recipient has failed to comply substantially with any provision of this chapter, the Secretary may refer the matter to the Attorney General of the United States with a recommendation that an appropriate civil action be instituted.

(2) Civil action

Upon such a referral, the Attorney General may bring a civil action in any United States district court having venue thereof for such relief as may be appropriate, including an action to recover the amount of the assistance furnished under this chapter that was not expended in accordance with it, or for mandatory or injunctive relief.

(d) Review

(1) In general

Any recipient who receives notice under subsection (a) of this section of the termination, reduction, or limitation of payments under this chapter--

(A) may, not later than 60 days after receiving such notice, file with the United States Court of Appeals for the circuit in which such State is located, or in the United States Court of Appeals for the District of Columbia, a petition for review of the action of the Secretary; and

(B) upon the filing of any petition under subparagraph (A), shall forthwith transmit copies of the petition to the Secretary and the Attorney General of the United States, who shall represent the Secretary in the litigation.

(2) Procedure

The Secretary shall file in the court a record of the proceeding on which the Secretary based the action, as provided in [section 2112 of Title 28](#). No objection to the action of the Secretary shall be considered by the court unless such objection has been urged before the Secretary.

(3) Disposition

(A) Court proceedings

The court shall have jurisdiction to affirm or modify the action of the Secretary or to set it aside in whole or in part. The findings of fact by the Secretary, if supported by substantial evidence on the record considered as a whole, shall be conclusive. The court may order additional evidence to be taken by the Secretary, and to be made part of the record.

(B) Secretary

The Secretary--

(i) may modify the findings of fact of the Secretary, or make new findings, by reason of the new evidence so taken and filed with the court; and

(ii) shall file--

(I) such modified or new findings, which findings with respect to questions of fact shall be conclusive if supported by substantial evidence on the record considered as a whole; and

(II) the recommendation of the Secretary, if any, for the modification or setting aside of the original action of the Secretary.

(4) Finality

Upon the filing of the record with the court, the jurisdiction of the court shall be exclusive and its judgment shall be final, except that such judgment shall be subject to review by the Supreme Court of the United States upon writ of certiorari or certification as provided in [section 1254 of Title 28](#).

[§ 4162. Replacement of recipient](#)

(a) Authority

As a condition of the Secretary making a grant under this chapter on behalf of an Indian tribe, the tribe shall agree that, notwithstanding any other provision of law, the Secretary may, only in the circumstances set forth in subsection (b) of this section, require that a replacement tribally designated housing entity serve as the recipient for the tribe, in accordance with subsection (c) of this section.

(b) Conditions of removal

The Secretary may require such replacement tribally designated housing entity for a tribe only upon a determination by the Secretary on the record after opportunity for a hearing that the recipient for the tribe has engaged in a pattern or practice of activities that constitutes substantial or willful noncompliance with the requirements under this chapter.

(c) Choice and term of replacement

If the Secretary requires that a replacement tribally designated housing entity serve as the recipient for a tribe (or tribes)--

(1) the replacement entity shall be an entity mutually agreed upon by the Secretary and the tribe (or tribes) for which the recipient was authorized to act, except that if no such entity is agreed upon before the expiration of the 60-day period beginning upon the date that the Secretary makes the determination under subsection (b) of this section, the Secretary shall act as the replacement entity until agreement is reached upon a replacement entity; and

(2) the replacement entity (or the Secretary, as provided in paragraph (1)) shall act as the tribally designated housing entity for the tribe (or tribes) for a period that expires upon--

(A) a date certain, which shall be specified by the Secretary upon making the determination under subsection (b) of this section; or

(B) the occurrence of specific conditions, which conditions shall be specified in written notice provided by the Secretary to the tribe upon making the determination under subsection (b) of this section.

§ 4163. Monitoring of compliance

(a) Enforceable agreements

Each recipient, through binding contractual agreements with owners and otherwise, shall ensure long-term compliance with the provisions of this chapter. Such measures shall provide for (1) enforcement of the provisions of this chapter by the grant beneficiary or by recipients and other intended beneficiaries, and (2) remedies for the breach of such provisions.

(b) Periodic monitoring

Not less frequently than annually, each recipient shall review the activities conducted and housing assisted under this chapter to assess compliance with the requirements of this chapter. Such review shall include an appropriate level of onsite inspection of housing to determine compliance with applicable requirements. The results of each review shall be included in the performance report of the recipient submitted to the Secretary under [section 4164](#) of this title and made available to the public.

(c) Performance measures

The Secretary shall establish such performance measures as may be necessary to assess compliance with the requirements of this chapter.

§ 4164. Performance reports

(a) Requirement

For each fiscal year, each recipient shall--

(1) review the progress it has made during such fiscal year in carrying out the Indian housing plan (or plans) for the Indian tribes for which it administers grant amounts; and

(2) submit a report to the Secretary (in a form acceptable to the Secretary) describing the conclusions of the review.

(b) Content

Each report under this section for a fiscal year shall--

(1) describe the use of grant amounts provided to the recipient for such fiscal year;

(2) assess the relationship of such use to the planned activities identified in the Indian housing plan of the grant beneficiary; and

(3) indicate the programmatic accomplishments of the recipient.

(4) Repealed. [Pub.L. 110-411, Title IV, § 403\(3\)](#), Oct. 14, 2008, 122 Stat. 4330

(c) Submission

The Secretary shall establish dates for submission of reports under this section, and review such reports and make such recommendations as the Secretary considers appropriate to carry out the purposes of this chapter.

(d) Public availability

A recipient preparing a report under this section shall make the report publicly available to the citizens in the jurisdiction of the recipient in sufficient time to permit such citizens to comment on such report prior to its submission to the Secretary, and in such manner and at such times as the recipient may determine. The report shall include a summary of any comments received by the grant beneficiary or recipient from citizens in its jurisdiction regarding its program.

§ 4165. Review and audit by Secretary

(a) Requirements under chapter 75 of Title 31

An entity designated by an Indian tribe as a housing entity shall be treated, for purposes of chapter 75 of Title 31, as

a non-Federal entity that is subject to the audit requirements that apply to non-Federal entities under that chapter.

(b) Additional reviews and audits

(1) In general

In addition to any audit or review under subsection (a) of this section, to the extent the Secretary determines such action to be appropriate, the Secretary may conduct an audit or review of a recipient in order to--

(A) determine whether the recipient--

(i) has carried out--

(I) eligible activities in a timely manner; and

(II) eligible activities and certification in accordance with this chapter and other applicable law;

(ii) has a continuing capacity to carry out eligible activities in a timely manner; and

(iii) is in compliance with the Indian housing plan of the recipient; and

(B) verify the accuracy of information contained in any performance report submitted by the recipient under [section 4164](#) of this title.

(2) On-site visits

To the extent practicable, the reviews and audits conducted under this subsection shall include on-site visits by the appropriate official of the Department of Housing and Urban Development.

(c) Review of reports

(1) In general

The Secretary shall provide each recipient that is the subject of a report made by the Secretary under this section notice that the recipient may review and comment on the report during a period of not less than 30 days after the date on which notice is issued under this paragraph.

(2) Public availability

After taking into consideration any comments of the recipient under paragraph (1), the Secretary--

(A) may revise the report; and

(B) not later than 30 days after the date on which those comments are received, shall make the comments and the report (with any revisions made under subparagraph (A)) readily available to the public.

(d) Effect of reviews

Subject to [section 4161\(a\)](#) of this title, after reviewing the reports and audits relating to a recipient that are submitted to the Secretary under this section, the Secretary may adjust the amount of a grant made to a recipient under this chapter in accordance with the findings of the Secretary with respect to those reports and audits.

§ 4166. GAO audits

To the extent that the financial transactions of Indian tribes and recipients of grant amounts under this chapter relate to amounts provided under this chapter, such transactions may be audited by the Comptroller General of the United States under such rules and regulations as may be prescribed by the Comptroller General. The representatives of the Government Accountability Office shall have access to all books, accounts, records, reports, files, and other papers, things, or property belonging to or in use by such tribes and recipients pertaining to such financial transactions and necessary to facilitate the audit.

§ 4167. Reports to Congress

(a) In general

Not later than 90 days after the conclusion of each fiscal year in which assistance under this chapter is made available, the Secretary shall submit to the Congress a report that contains--

- (1)** a description of the progress made in accomplishing the objectives of this chapter;
- (2)** a summary of the use of funds available under this chapter during the preceding fiscal year; and
- (3)** a description of the aggregate outstanding loan guarantees under subchapter VI of this chapter.

(b) Related reports

The Secretary may require recipients of grant amounts under this chapter to submit to the Secretary such reports and other information as may be necessary in order for the Secretary to make the report required by subsection (a) of this section.

§ 4168. Public availability of information

Each recipient shall make any housing plan, policy, or annual report prepared by the recipient available to the general public.

§ 4181. Termination of Indian housing assistance under United States Housing Act of 1937

(a) Termination of assistance

After September 30, 1997, financial assistance may not be provided under the United States Housing Act of 1937 [[42 U.S.C.A. § 1437 et seq.](#)] or pursuant to any commitment entered into under such Act, for Indian housing developed or operated pursuant to a contract between the Secretary and an Indian housing authority, unless such assistance is provided from amounts made available for fiscal year 1997 and pursuant to a commitment entered into before September 30, 1997. Any housing that is the subject of a contract for tenant-based assistance between the Secretary and an Indian housing authority that is terminated under this section shall, for the following fiscal year and each fiscal year thereafter, be considered to be a dwelling unit under [section 4152\(b\)\(1\)](#) of this title.

(b) Termination of restrictions on use of Indian housing

After September 30, 1997, any housing developed or operated pursuant to a contract between the Secretary and an Indian housing authority pursuant to the United States Housing Act of 1937 [[42 U.S.C.A. § 1437 et seq.](#)], shall not be subject to any provision of such Act or any annual contributions contract or other agreement pursuant to such Act, but shall be considered and maintained as affordable housing for purposes of this chapter.

§ 4182. Termination of new commitments for rental assistance

After September 30, 1997, financial assistance for rental housing assistance under the United States Housing Act of 1937 [[42 U.S.C.A. § 1437 et seq.](#)] may not be provided to any Indian housing authority or tribally designated housing entity, unless such assistance is provided pursuant to a contract for such assistance entered into by the Secretary and the Indian housing authority before such date. Any such assistance provided pursuant to such a contract shall be governed by the provisions of the United States Housing Act of 1937 (as in effect before the date of the effectiveness of this chapter) and the provisions of such contract.

§ 4183. Savings provision

(a) Existing rights and duties

Except as provided in [sections 4181](#) and [4182](#) of this title, this chapter may not be construed to affect the validity of any right, duty, or obligation of the United States or other person arising under or pursuant to any commitment or agreement lawfully entered into before October 1, 1997, under the United States Housing Act of 1937 [[42 U.S.C.A. § 1437 et seq.](#)], subtitle D of title IV of the Cranston-Gonzalez National Affordable Housing Act [[42 U.S.C.A. § 12899 et seq.](#)], title II of the Cranston-Gonzalez National Affordable Housing Act [[42 U.S.C.A. § 12721 et seq.](#)], title IV of the McKinney-Vento Homeless Assistance Act [[42 U.S.C.A. § 11361 et seq.](#)], or section 2 of the HUD Demonstration Act of 1993.

(b) Obligations under repealed provisions

Notwithstanding the amendments made by this subchapter, any obligation of the Secretary made under or pursuant to title II of the Cranston-Gonzalez National Affordable Housing Act [[42 U.S.C.A. § 12721 et seq.](#)], title IV of the McKinney-Vento Homeless Assistance Act [[42 U.S.C.A. § 11361 et seq.](#)], or section 2 of the HUD Demonstration Act of 1993 shall continue to be governed by the provisions of such Acts (as in effect before the date of the effectiveness of the amendments made by this subchapter).

§ 4184. Effect on HOME Investment Partnerships Act

Nothing in this Act or an amendment made by this Act prohibits or prevents any participating jurisdiction (within the meaning of the HOME Investment Partnerships Act ([42 U.S.C. 12721 et seq.](#))) from providing any amounts made available to the participating jurisdiction under that Act ([42 U.S.C. 12721 et seq.](#)) to an Indian tribe or a tribally designated housing entity for use in accordance with that Act ([42 U.S.C. 12721 et seq.](#)).

§ 4191. Authority and requirements

(a) Authority

To such extent or in such amounts as provided in appropriations Acts, the Secretary may, subject to the limitations of this subchapter (including limitations designed to protect and maintain the viability of rental housing units owned

or operated by the recipient that were developed under a contract between the Secretary and an Indian housing authority pursuant to the United States Housing Act of 1937 [[42 U.S.C.A. § 1437 et seq.](#)]), and upon such terms and conditions as the Secretary may prescribe, guarantee and make commitments to guarantee, the notes or other obligations issued by Indian tribes or tribally designated housing entities with tribal approval, for the purposes of financing affordable housing activities described in [section 4132](#) of this title and housing related community development activity as consistent with the purposes of this chapter.

(b) Terms of loans

Notes or other obligations guaranteed pursuant to this subchapter shall be in such form and denominations, have such maturities, and be subject to such conditions as may be prescribed by regulations issued by the Secretary. The Secretary may not deny a guarantee under this subchapter on the basis of the proposed repayment period for the note or other obligation, unless the period is more than 20 years or the Secretary determines that the period causes the guarantee to constitute an unacceptable financial risk.

(c) Limitation on outstanding guarantees

No guarantee or commitment to guarantee shall be made with respect to any note or other obligation if the total outstanding notes or obligations of the issuer guaranteed under this subchapter (excluding any amount defeased under the contract entered into under [section 4192\(a\)\(1\)](#) of this title) would thereby exceed an amount equal to 5 times the amount of the grant approval for the issuer pursuant to subchapter III of this chapter.

(d) Limitation on percentage

A guarantee made under this subchapter shall guarantee repayment of 95 percent of the unpaid principal and interest due on the notes or other obligations guaranteed.

[§ 4192. Security and repayment](#)

(a) Requirements on issuer

To assure the repayment of notes or other obligations and charges incurred under this subchapter and as a condition for receiving such guarantees, the Secretary shall require the Indian tribe or housing entity issuing such notes or obligations to--

- (1) enter into a contract, in a form acceptable to the Secretary, for repayment of notes or other obligations guaranteed under this subchapter;
- (2) pledge any grant for which the issuer may become eligible under this chapter;
- (3) demonstrate that the extent of such issuance and guarantee under this subchapter is within the financial capacity of the tribe and is not likely to impair the ability to use grant amounts under subchapter I of this chapter, taking into consideration the requirements under [section 4133\(b\)](#) of this title; and
- (4) furnish, at the discretion of the Secretary, such other security as may be deemed appropriate by the Secretary in making such guarantees, including increments in local tax receipts generated by the activities assisted under this chapter or disposition proceeds from the sale of land or rehabilitated property.

(b) Repayment from grant amounts

Notwithstanding any other provision of this chapter--

(1) the Secretary may apply grants pledged pursuant to subsection (a)(2) of this section to any repayments due the United States as a result of such guarantees; and

(2) grants allocated under this chapter for an Indian tribe or housing entity (including program income derived therefrom) may be used to pay principal and interest due (including such servicing, underwriting, and other costs as may be specified in regulations issued by the Secretary) on notes or other obligations guaranteed pursuant to this subchapter.

(c) Full faith and credit

The full faith and credit of the United States is pledged to the payment of all guarantees made under this subchapter. Any such guarantee made by the Secretary shall be conclusive evidence of the eligibility of the obligations for such guarantee with respect to principal and interest, and the validity of any such guarantee so made shall be incontestable in the hands of a holder of the guaranteed obligations.

§ 4193. Payment of interest

The Secretary may make, and contract to make, grants, in such amounts as may be approved in appropriations Acts, to or on behalf of an Indian tribe or housing entity issuing notes or other obligations guaranteed under this subchapter, to cover not to exceed 30 percent of the net interest cost (including such servicing, underwriting, or other costs as may be specified in regulations of the Secretary) to the borrowing entity or agency of such obligations. The Secretary may also, to the extent approved in appropriations Acts, assist the issuer of a note or other obligation guaranteed under this subchapter in the payment of all or a portion of the principal and interest amount due under the note or other obligation, if the Secretary determines that the issuer is unable to pay the amount because of circumstances of extreme hardship beyond the control of the issuer.

§ 4194. Training and information

The Secretary, in cooperation with eligible public entities, shall carry out training and information activities with respect to the guarantee program under this subchapter.

§ 4195. Limitations on amount of guarantees

(a) Aggregate fiscal year limitation

Notwithstanding any other provision of law and subject only to the absence of qualified applicants or proposed activities and to the authority provided in this subchapter, to the extent approved or provided in appropriations Acts, the Secretary may enter into commitments to guarantee notes and obligations under this subchapter with an aggregate principal amount not to exceed \$400,000,000 for each of fiscal years 2009 through 2013.

(b) Authorization of appropriations for credit subsidy

There are authorized to be appropriated to cover the costs (as such term is defined in [section 661a of Title 2](#)) of guarantees under this subchapter such sums as may be necessary for each of fiscal years 2009 through 2013.

(c) Aggregate outstanding limitation

The total amount of outstanding obligations guaranteed on a cumulative basis by the Secretary pursuant to this subchapter shall not at any time exceed \$2,000,000,000 or such higher amount as may be authorized to be appropriated for this subchapter for any fiscal year.

(d) Fiscal year limitations on tribes

The Secretary shall monitor the use of guarantees under this subchapter by Indian tribes. If the Secretary finds that 50 percent of the aggregate guarantee authority under subsection (c) of this section has been committed, the Secretary may--

(1) impose limitations on the amount of guarantees any one Indian tribe may receive in any fiscal year of \$50,000,000; or

(2) request the enactment of legislation increasing the aggregate outstanding limitation on guarantees under this subchapter.

§ 4196. Demonstration program for guaranteed loans to finance tribal community and economic development activities

(a) Authority

(1) In general

Subject to paragraph (2), to the extent and in such amounts as are provided in appropriation Acts, subject to the requirements of this section, and in accordance with such terms and conditions as the Secretary may prescribe, the Secretary may guarantee and make commitments to guarantee the notes and obligations issued by Indian tribes or tribally designated housing entities with tribal approval, for the purposes of financing activities carried out on Indian reservations and in other Indian areas that, under the first sentence of [section 5308\(a\) of Title 42](#), are eligible for financing with notes and other obligations guaranteed pursuant to that section.

(2) Limitation

The Secretary may guarantee, or make commitments to guarantee, under paragraph (1) the notes or obligations of not more than 4 Indian tribes or tribally designated housing entities located in each Department of Housing and Urban Development Office of Native American Programs region.

(b) Low-income benefit requirement

Not less than 70 percent of the aggregate amount received by an Indian tribe or tribally designated housing entity as a result of a guarantee under this section shall be used for the support of activities that benefit low-income families on Indian reservations and other Indian areas.

(c) Financial soundness

(1) In general

The Secretary shall establish underwriting criteria for guarantees under this section, including fees for the guarantees, as the Secretary determines to be necessary to ensure that the program under this section is financially sound.

(2) Amounts of fees

Fees for guarantees established under paragraph (1) shall be established in amounts that are sufficient, but do not exceed the minimum amounts necessary, to maintain a negative credit subsidy for the program under this section, as determined based on the risk to the Federal Government under the underwriting requirements established under paragraph (1).

(d) Terms of obligations

(1) In general

Each note or other obligation guaranteed pursuant to this section shall be in such form and denomination, have such maturity, and be subject to such conditions as the Secretary may prescribe, by regulation.

(2) Limitation

The Secretary may not deny a guarantee under this section on the basis of the proposed repayment period for the note or other obligation, unless--

(A) the period is more than 20 years; or

(B) the Secretary determines that the period would cause the guarantee to constitute an unacceptable financial risk.

(e) Limitation on percentage

A guarantee made under this section shall guarantee repayment of 95 percent of the unpaid principal and interest due on the note or other obligation guaranteed.

(f) Security and repayment

(1) Requirements on issuer

To ensure the repayment of notes and other obligations and charges incurred under this section and as a condition for receiving the guarantees, the Secretary shall require the Indian tribe or housing entity issuing the notes or obligations--

(A) to enter into a contract, in a form acceptable to the Secretary, for repayment of notes or other obligations guaranteed under this section;

(B) to demonstrate that the extent of each issuance and guarantee under this section is within the financial capacity of the Indian tribe; and

(C) to furnish, at the discretion of the Secretary, such security as the Secretary determines to be appropriate in making the guarantees, including increments in local tax receipts generated by the activities assisted by a guarantee under this section or disposition proceeds from the sale of land or rehabilitated property, except that the security may not include any grant amounts received or for which the issuer may be eligible under subchapter I of

this chapter.

(2) Full faith and credit

(A) In general

The full faith and credit of the United States is pledged to the payment of all guarantees made under this section.

(B) Treatment of guarantees

(i) In general

Any guarantee made by the Secretary under this section shall be conclusive evidence of the eligibility of the obligations for the guarantee with respect to principal and interest.

(ii) Incontestable nature

The validity of any such a guarantee shall be incontestable in the hands of a holder of the guaranteed obligations.

(g) Training and information

The Secretary, in cooperation with Indian tribes and tribally designated housing entities, may carry out training and information activities with respect to the guarantee program under this section.

(h) Limitations on amount of guarantees

(1) Aggregate fiscal year limitation

Notwithstanding any other provision of law, subject only to the absence of qualified applicants or proposed activities and to the authority provided in this section, and to the extent approved or provided for in appropriations Acts, the Secretary may enter into commitments to guarantee notes and obligations under this section with an aggregate principal amount not to exceed \$200,000,000 for each of fiscal years 2009 through 2013.

(2) Authorization of appropriations for credit subsidy

There are authorized to be appropriated to cover the costs (as defined in [section 661a of Title 2](#)) of guarantees under this section \$1,000,000 for each of fiscal years 2009 through 2013.

(3) Aggregate outstanding limitation

The total amount of outstanding obligations guaranteed on a cumulative basis by the Secretary pursuant to this section shall not at any time exceed \$1,000,000,000 or such higher amount as may be authorized to be appropriated for this section for any fiscal year.

(4) Fiscal year limitations on Indian tribes

(A) In general

The Secretary shall monitor the use of guarantees under this section by Indian tribes.

(B) Modifications

If the Secretary determines that 50 percent of the aggregate guarantee authority under paragraph (3) has been committed, the Secretary may--

- (i) impose limitations on the amount of guarantees pursuant to this section that any single Indian tribe may receive in any fiscal year of \$25,000,000; or
- (ii) request the enactment of legislation increasing the aggregate outstanding limitation on guarantees under this section.

(i) Report

Not later than 4 years after October 14, 2008, the Secretary shall submit to Congress a report describing the use of the authority under this section by Indian tribes and tribally designated housing entities, including--

- (1) an identification of the extent of the use and the types of projects and activities financed using that authority; and
- (2) an analysis of the effectiveness of the use in carrying out the purposes of this section.

(j) Termination

The authority of the Secretary under this section to make new guarantees for notes and obligations shall terminate on October 1, 2013.

§ 4211. 50-year leasehold interest in trust or restricted lands for housing purposes

(a) Authority to lease

Notwithstanding any other provision of law, any trust or restricted Indian lands, whether tribally or individually owned, may be leased by the Indian owners, subject to the approval of the affected Indian tribe and the Secretary of the Interior, for housing development and residential purposes.

(b) Term

Each lease pursuant to subsection (a) of this section shall be for a term not exceeding 50 years.

(c) Rule of construction

This section may not be construed to repeal, limit, or affect any authority to lease any trust or restricted Indian lands that--

- (1) is conferred by or pursuant to any other provision of law; or
- (2) provides for leases for any period exceeding 50 years.

(d) Self-implementation

This section is intended to be self-implementing and shall not require the issuance of any rule, regulation, or order to take effect as provided in [section 705](#).

§ 4212. Training and technical assistance

There are authorized to be appropriated for assistance for a national organization representing Native American housing interests for providing training and technical assistance to Indian housing authorities and tribally designated housing entities such sums as may be necessary for each of fiscal years 2009 through 2013.

§ 4221. Definitions

In this subchapter:

(1) Department of Hawaiian Home Lands; Department

The term “Department of Hawaiian Home Lands” or “Department” means the agency or department of the government of the State of Hawaii that is responsible for the administration of the Hawaiian Homes Commission Act, 1920 (42 Stat. 108 et seq.).

(2) Director

The term “Director” means the Director of the Department of Hawaiian Home Lands.

(3) Elderly families; near-elderly families

(A) In general

The term “elderly family” or “near-elderly family” means a family whose head (or his or her spouse), or whose sole member, is--

- (i) for an elderly family, an elderly person; or
- (ii) for a near-elderly family, a near-elderly person.

(B) Certain families included

The term “elderly family” or “near-elderly family” includes--

- (i) two or more elderly persons or near-elderly persons, as the case may be, living together; and
- (ii) one or more persons described in clause (i) living with one or more persons determined under the housing plan to be essential to their care or well-being.

(4) Hawaiian Home Lands

The term “Hawaiian Home Lands” means lands that--

(A) have the status as Hawaiian home lands under section 204 of the Hawaiian Homes Commission Act, 1920 (42 Stat. 110); or

(B) are acquired pursuant to that Act.

(5) Housing area

The term “housing area” means an area of Hawaiian Home Lands with respect to which the Department of Hawaiian Home Lands is authorized to provide assistance for affordable housing under this chapter.

(6) Housing entity

The term “housing entity” means the Department of Hawaiian Home Lands.

(7) Housing plan

The term “housing plan” means a plan developed by the Department of Hawaiian Home Lands.

(8) Median income

The term “median income” means, with respect to an area that is a Hawaiian housing area, the greater of--

(A) the median income for the Hawaiian housing area, which shall be determined by the Secretary; or

(B) the median income for the State of Hawaii.

(9) Native Hawaiian

The term “Native Hawaiian” means any individual who is--

(A) a citizen of the United States; and

(B) a descendant of the aboriginal people, who, prior to 1778, occupied and exercised sovereignty in the area that currently constitutes the State of Hawaii, as evidenced by--

(i) genealogical records;

(ii) verification by kupuna (elders) or kama‘aina (long-term community residents); or

(iii) birth records of the State of Hawaii.

§ 4222. Block grants for affordable housing activities

(a) Grant authority

For each fiscal year, the Secretary shall (to the extent amounts are made available to carry out this subchapter) make a grant under this subchapter to the Department of Hawaiian Home Lands to carry out affordable housing activities for Native Hawaiian families who are eligible to reside on the Hawaiian Home Lands.

(b) Plan requirement

(1) In general

The Secretary may make a grant under this subchapter to the Department of Hawaiian Home Lands for a fiscal year only if--

(A) the Director has submitted to the Secretary a housing plan for that fiscal year; and

(B) the Secretary has determined under [section 4224](#) of this title that the housing plan complies with the requirements of [section 4223](#) of this title.

(2) Waiver

The Secretary may waive the applicability of the requirements under paragraph (1), in part, if the Secretary finds that the Department of Hawaiian Home Lands has not complied or cannot comply with those requirements due to circumstances beyond the control of the Department of Hawaiian Home Lands.

(c) Use of funds for affordable housing activities under plan

Except as provided in subsection (e) of this section, amounts provided under a grant under this section may be used only for affordable housing activities under this subchapter that are consistent with a housing plan approved under [section 4224](#) of this title.

(d) Administrative expenses

(1) In general

The Secretary shall, by regulation, authorize the Department of Hawaiian Home Lands to use a percentage of any grant amounts received under this subchapter for any reasonable administrative and planning expenses of the Department relating to carrying out this subchapter and activities assisted with those amounts.

(2) Administrative and planning expenses

The administrative and planning expenses referred to in paragraph (1) include--

(A) costs for salaries of individuals engaged in administering and managing affordable housing activities assisted with grant amounts provided under this subchapter; and

(B) expenses incurred in preparing a housing plan under [section 4223](#) of this title.

(e) Public-private partnerships

The Director shall make all reasonable efforts, consistent with the purposes of this subchapter, to maximize par-

ticipation by the private sector, including nonprofit organizations and for-profit entities, in implementing a housing plan that has been approved by the Secretary under [section 4223](#) of this title.

§ 4223. Housing plan

(a) Plan submission

The Secretary shall--

- (1) require the Director to submit a housing plan under this section for each fiscal year; and
- (2) provide for the review of each plan submitted under paragraph (1).

(b) Five-year plan

Each housing plan under this section shall--

- (1) be in a form prescribed by the Secretary; and
- (2) contain, with respect to the 5-year period beginning with the fiscal year for which the plan is submitted, the following information:
 - (A) A general statement of the mission of the Department of Hawaiian Home Lands to serve the needs of the low-income families to be served by the Department.
 - (B) A statement of the goals and objectives of the Department of Hawaiian Home Lands to enable the Department to serve the needs identified in subparagraph (A) during the period.
 - (C) An overview of the activities planned during the period including an analysis of the manner in which the activities will enable the Department to meet its mission, goals, and objectives.

(c) One-year plan

A housing plan under this section shall--

- (1) be in a form prescribed by the Secretary; and
- (2) contain the following information relating to the fiscal year for which the assistance under this subchapter is to be made available:
 - (A) A statement of the goals and objectives to be accomplished during the period covered by the plan.
 - (B) A statement of the housing needs of the low-income families served by the Department and the means by which those needs will be addressed during the period covered by the plan, including--
 - (i) a description of the estimated housing needs and the need for assistance for the low-income families to be served by the Department, including a description of the manner in which the geographical distribution of assistance is consistent with--

- (I) the geographical needs of those families; and
- (II) needs for various categories of housing assistance; and
- (ii) a description of the estimated housing needs for all families to be served by the Department.
- (C) An operating budget for the Department of Hawaiian Home Lands, in a form prescribed by the Secretary, that includes--
- (i) an identification and a description of the financial resources reasonably available to the Department to carry out the purposes of this subchapter, including an explanation of the manner in which amounts made available will be used to leverage additional resources; and
- (ii) the uses to which the resources described in clause (i) will be committed, including--
- (I) eligible and required affordable housing activities; and
- (II) administrative expenses.
- (D) A statement of the affordable housing resources currently available at the time of the submittal of the plan and to be made available during the period covered by the plan, including--
- (i) a description of the significant characteristics of the housing market in the State of Hawaii, including the availability of housing from other public sources, private market housing;
- (ii) the manner in which the characteristics referred to in clause (i) influence the decision of the Department of Hawaiian Home Lands to use grant amounts to be provided under this subchapter for--
- (I) rental assistance;
- (II) the production of new units;
- (III) the acquisition of existing units; or
- (IV) the rehabilitation of units;
- (iii) a description of the structure, coordination, and means of cooperation between the Department of Hawaiian Home Lands and any other governmental entities in the development, submission, or implementation of housing plans, including a description of--
- (I) the involvement of private, public, and nonprofit organizations and institutions;
- (II) the use of loan guarantees under [section 1715z-13b of Title 12](#); and
- (III) other housing assistance provided by the United States, including loans, grants, and mortgage insurance;
- (iv) a description of the manner in which the plan will address the needs identified pursuant to subparagraph

(C);

(v) a description of--

(I) any existing or anticipated homeownership programs and rental programs to be carried out during the period covered by the plan; and

(II) the requirements and assistance available under the programs referred to in subclause (I);

(vi) a description of--

(I) any existing or anticipated housing rehabilitation programs necessary to ensure the long-term viability of the housing to be carried out during the period covered by the plan; and

(II) the requirements and assistance available under the programs referred to in subclause (I);

(vii) a description of--

(I) all other existing or anticipated housing assistance provided by the Department of Hawaiian Home Lands during the period covered by the plan, including--

(aa) transitional housing;

(bb) homeless housing;

(cc) college housing; and

(dd) supportive services housing; and

(II) the requirements and assistance available under such programs;

(viii)(I) a description of any housing to be demolished or disposed of;

(II) a timetable for that demolition or disposition; and

(III) any other information required by the Secretary with respect to that demolition or disposition;

(ix) a description of the manner in which the Department of Hawaiian Home Lands will coordinate with welfare agencies in the State of Hawaii to ensure that residents of the affordable housing will be provided with access to resources to assist in obtaining employment and achieving self-sufficiency;

(x) a description of the requirements established by the Department of Hawaiian Home Lands to--

(I) promote the safety of residents of the affordable housing;

(II) facilitate the undertaking of crime prevention measures;

(III) allow resident input and involvement, including the establishment of resident organizations; and

(IV) allow for the coordination of crime prevention activities between the Department and local law enforcement officials; and

(xi) a description of the entities that will carry out the activities under the plan, including the organizational capacity and key personnel of the entities.

(E) Certification of compliance

Evidence of compliance that shall include, as appropriate--

(i) a certification that the Department of Hawaiian Home Lands will comply with--

(I) title VI of the Civil Rights Act of 1964 ([42 U.S.C. 2000d et seq.](#)) or with the Fair Housing Act ([42 U.S.C. 3601 et seq.](#)) in carrying out this subchapter, to the extent that such title [\[FN1\]](#) is applicable; and

(II) other applicable Federal statutes;

(ii) a certification that the Department will require adequate insurance coverage for housing units that are owned and operated or assisted with grant amounts provided under this subchapter, in compliance with such requirements as may be established by the Secretary;

(iii) a certification that policies are in effect and are available for review by the Secretary and the public governing the eligibility, admission, and occupancy of families for housing assisted with grant amounts provided under this subchapter;

(iv) a certification that policies are in effect and are available for review by the Secretary and the public governing rents charged, including the methods by which such rents or homebuyer payments are determined, for housing assisted with grant amounts provided under this subchapter; and

(v) a certification that policies are in effect and are available for review by the Secretary and the public governing the management and maintenance of housing assisted with grant amounts provided under this subchapter.

(d) Applicability of Civil Rights statutes

(1) In general

To the extent that the requirements of title VI of the Civil Rights Act of 1964 ([42 U.S.C. 2000d et seq.](#)) or of the Fair Housing Act ([42 U.S.C. 3601 et seq.](#)) apply to assistance provided under this subchapter, nothing in the requirements concerning discrimination on the basis of race shall be construed to prevent the provision of assistance under this subchapter--

(A) to the Department of Hawaiian Home Lands on the basis that the Department served Native Hawaiians; or

(B) to an eligible family on the basis that the family is a Native Hawaiian family.

(2) Civil rights

Program eligibility under this subchapter may be restricted to Native Hawaiians. Subject to the preceding sentence, no person may be discriminated against on the basis of race, color, national origin, religion, sex, familial status, or disability.

(e) Use of nonprofit organizations

As a condition of receiving grant amounts under this subchapter, the Department of Hawaiian Home Lands shall, to the extent practicable, provide for private nonprofit organizations experienced in the planning and development of affordable housing for Native Hawaiians to carry out affordable housing activities with those grant amounts.

[\[FN1\]](#) So in original. See Codifications note under this section.

§ 4224. Review of plans

(a) Review and notice

(1) Review

(A) In general

The Secretary shall conduct a review of a housing plan submitted to the Secretary under [section 4223](#) of this title to ensure that the plan complies with the requirements of that section.

(B) Limitation

The Secretary shall have the discretion to review a plan referred to in subparagraph (A) only to the extent that the Secretary considers that the review is necessary.

(2) Notice

(A) In general

Not later than 60 days after receiving a plan under [section 4223](#) of this title, the Secretary shall notify the Director of the Department of Hawaiian Home Lands whether the plan complies with the requirements under that section.

(B) Effect of failure of Secretary to take action

For purposes of this subchapter, if the Secretary does not notify the Director, as required under this subsection and subsection (b) of this section, upon the expiration of the 60-day period described in subparagraph (A)--

(i) the plan shall be considered to have been determined to comply with the requirements under [section 4223](#) of this title; and

(ii) the Director shall be considered to have been notified of compliance.

(b) Notice of reasons for determination of noncompliance

If the Secretary determines that a plan submitted under [section 4223](#) of this title does not comply with the requirements of that section, the Secretary shall specify in the notice under subsection (a) of this section--

- (1) the reasons for noncompliance; and
- (2) any modifications necessary for the plan to meet the requirements of [section 4223](#) of this title.

(c) Review

(1) In general

After the Director of the Department of Hawaiian Home Lands submits a housing plan under [section 4223](#) of this title, or any amendment or modification to the plan to the Secretary, to the extent that the Secretary considers such action to be necessary to make a determination under this subsection, the Secretary shall review the plan (including any amendments or modifications thereto) to determine whether the contents of the plan--

- (A) set forth the information required by [section 4223](#) of this title to be contained in the housing plan;
- (B) are consistent with information and data available to the Secretary; and
- (C) are not prohibited by or inconsistent with any provision of this chapter or any other applicable law.

(2) Incomplete plans

If the Secretary determines under this subsection that any of the appropriate certifications required under [section 4223\(c\)\(2\)\(E\)](#) of this title are not included in a plan, the plan shall be considered to be incomplete.

(d) Updates to plan

(1) In general

Subject to paragraph (2), after a plan under [section 4223](#) of this title has been submitted for a fiscal year, the Director of the Department of Hawaiian Home Lands may comply with the provisions of that section for any succeeding fiscal year (with respect to information included for the 5-year period under [section 4223\(b\)](#) of this title or for the 1-year period under [section 4223\(c\)](#) of this title) by submitting only such information regarding such changes as may be necessary to update the plan previously submitted.

(2) Complete plans

The Director shall submit a complete plan under [section 4223](#) of this title not later than 4 years after submitting an initial plan under that section, and not less frequently than every 4 years thereafter.

(e) Effective date

This section and [section 4223](#) of this title shall take effect on the date provided by the Secretary pursuant to [section 4227\(a\)](#) of this title [\[FN1\]](#) to provide for timely submission and review of the housing plan as necessary for the provision of assistance under this subchapter for fiscal year 2001.

[FN1] So in original. There is no subsec. (a) in [section 4227](#) of this title.

§ 4225. Treatment of program income and labor standards

(a) Program income

(1) Authority to retain

The Department of Hawaiian Home Lands may retain any program income that is realized from any grant amounts received by the Department under this subchapter if--

(A) that income was realized after the initial disbursement of the grant amounts received by the Department; and

(B) the Director agrees to use the program income for affordable housing activities in accordance with the provisions of this subchapter.

(2) Prohibition of reduction of grant

The Secretary may not reduce the grant amount for the Department of Hawaiian Home Lands based solely on--

(A) whether the Department retains program income under paragraph (1); or

(B) the amount of any such program income retained.

(3) Exclusion of amounts

The Secretary may, by regulation, exclude from consideration as program income any amounts determined to be so small that compliance with the requirements of this subsection would create an unreasonable administrative burden on the Department.

(b) Labor standards

(1) In general

Any contract or agreement for assistance, sale, or lease pursuant to this subchapter shall contain--

(A) a provision requiring that an amount not less than the wages prevailing in the locality, as determined or adopted (subsequent to a determination under applicable State or local law) by the Secretary, shall be paid to all architects, technical engineers, draftsmen, technicians employed in the development and all maintenance, and laborers and mechanics employed in the operation, of the affordable housing project involved; and

(B) a provision that an amount not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to [sections 3141-3144](#), [3146](#), and [3147 of Title 40](#) shall be paid to all laborers and mechanics employed in the development of the affordable housing involved.

(2) Exceptions

Paragraph (1) and provisions relating to wages required under paragraph (1) in any contract or agreement for as-

sistance, sale, or lease under this subchapter, shall not apply to any individual who performs the services for which the individual volunteered and who is not otherwise employed at any time in the construction work and received no compensation or is paid expenses, reasonable benefits, or a nominal fee for those services.

§ 4226. Environmental review

(a) In general

(1) Release of funds

(A) In general

The Secretary may carry out the alternative environmental protection procedures described in subparagraph (B) in order to ensure--

(i) that the policies of the National Environmental Policy Act of 1969 ([42 U.S.C. 4321 et seq.](#)) and other provisions of law that further the purposes of such Act (as specified in regulations issued by the Secretary) are most effectively implemented in connection with the expenditure of grant amounts provided under this subchapter; and

(ii) to the public undiminished protection of the environment.

(B) Alternative environmental protection procedure

In lieu of applying environmental protection procedures otherwise applicable, the Secretary may by regulation provide for the release of funds for specific projects to the Department of Hawaiian Home Lands if the Director of the Department assumes all of the responsibilities for environmental review, decisionmaking, and action under the National Environmental Policy Act of 1969 ([42 U.S.C. 4321 et seq.](#)), and such other provisions of law as the regulations of the Secretary specify, that would apply to the Secretary were the Secretary to undertake those projects as Federal projects.

(2) Regulations

(A) In general

The Secretary shall issue regulations to carry out this section only after consultation with the Council on Environmental Quality.

(B) Contents

The regulations issued under this paragraph shall--

(i) provide for the monitoring of the environmental reviews performed under this section;

(ii) in the discretion of the Secretary, facilitate training for the performance of such reviews; and

(iii) provide for the suspension or termination of the assumption of responsibilities under this section.

(3) Effect on assumed responsibility

The duty of the Secretary under paragraph (2)(B) shall not be construed to limit or reduce any responsibility assumed by the Department of Hawaiian Home Lands for grant amounts with respect to any specific release of funds.

(b) Procedure

(1) In general

The Secretary shall authorize the release of funds subject to the procedures under this section only if, not less than 15 days before that approval and before any commitment of funds to such projects, the Director of the Department of Hawaiian Home Lands submits to the Secretary a request for such release accompanied by a certification that meets the requirements of subsection (c).

(2) Effect of approval

The approval of the Secretary of a certification described in paragraph (1) shall be deemed to satisfy the responsibilities of the Secretary under the National Environmental Policy Act of 1969 ([42 U.S.C. 4321 et seq.](#)) and such other provisions of law as the regulations of the Secretary specify to the extent that those responsibilities relate to the releases of funds for projects that are covered by that certification.

(c) Certification

A certification under the procedures under this section shall--

- (1) be in a form acceptable to the Secretary;
- (2) be executed by the Director of the Department of Hawaiian Home Lands;
- (3) specify that the Department of Hawaiian Home Lands has fully carried out its responsibilities as described under subsection (a) of this section; and
- (4) specify that the Director--
 - (A) consents to assume the status of a responsible Federal official under the National Environmental Policy Act of 1969 ([42 U.S.C. 4321 et seq.](#)) and each provision of law specified in regulations issued by the Secretary to the extent that those laws apply by reason of subsection (a) of this section; and
 - (B) is authorized and consents on behalf of the Department of Hawaiian Home Lands and the Director to accept the jurisdiction of the Federal courts for the purpose of enforcement of the responsibilities of the Director of the Department of Hawaiian Home Lands as such an official.

§ 4227. Regulations

The Secretary shall issue final regulations necessary to carry out this subchapter not later than October 1, 2001.

§ 4228. Affordable housing activities

(a) [FN1](#) National objectives and eligible families

(1) Primary objective

The national objectives of this subchapter are--

(A) to assist and promote affordable housing activities to develop, maintain, and operate affordable housing in safe and healthy environments for occupancy by low-income Native Hawaiian families;

(B) to ensure better access to private mortgage markets and to promote self-sufficiency of low-income Native Hawaiian families;

(C) to coordinate activities to provide housing for low-income Native Hawaiian families with Federal, State, and local activities to further economic and community development;

(D) to plan for and integrate infrastructure resources on the Hawaiian Home Lands with housing development; and

(E) to--

(i) promote the development of private capital markets; and

(ii) allow the markets referred to in clause (i) to operate and grow, thereby benefiting Native Hawaiian communities.

(2) Eligible families

(A) In general

Except as provided under subparagraph (B), assistance for eligible housing activities under this subchapter shall be limited to low-income Native Hawaiian families.

(B) Exception to low-income requirement

(i) In general

The Director may provide assistance for homeownership activities under--

(I) [section 4229\(b\)](#) of this title;

(II) model activities under [section 4229\(f\)](#) of this title; or

(III) loan guarantee activities under [section 1715z-13b of Title 12](#) to Native Hawaiian families who are not low-income families, to the extent that the Secretary approves the activities under that section to address a need for housing for those families that cannot be reasonably met without that assistance.

(ii) Limitations

The Secretary shall establish limitations on the amount of assistance that may be provided under this subchapter for activities for families that are not low-income families.

(C) Other families

Notwithstanding paragraph (1), the Director may provide housing or housing assistance provided through affordable housing activities assisted with grant amounts under this subchapter to a family that is not composed of Native Hawaiians if--

(i) the Department determines that the presence of the family in the housing involved is essential to the well-being of Native Hawaiian families; and

(ii) the need for housing for the family cannot be reasonably met without the assistance.

(D) Preference

(i) In general

A housing plan submitted under [section 4223](#) of this title may authorize a preference, for housing or housing assistance provided through affordable housing activities assisted with grant amounts provided under this subchapter to be provided, to the extent practicable, to families that are eligible to reside on the Hawaiian Home Lands.

(ii) Application

In any case in which a housing plan provides for preference described in clause (i), the Director shall ensure that housing activities that are assisted with grant amounts under this subchapter are subject to that preference.

(E) Use of nonprofit organizations

As a condition of receiving grant amounts under this subchapter, the Department of Hawaiian Home Lands, shall to the extent practicable, provide for private nonprofit organizations experienced in the planning and development of affordable housing for Native Hawaiians to carry out affordable housing activities with those grant amounts.

[\[FN1\]](#) So in original. No subsec. (b) has been enacted.

[§ 4229. Eligible affordable housing activities](#)

(a) In general

Affordable housing activities under this section are activities conducted in accordance with the requirements of [section 4230](#) of this title to--

(1) develop or to support affordable housing for rental or homeownership; or

(2) provide housing services with respect to affordable housing, through the activities described in subsection (b) of this section.

(b) Activities

The activities described in this subsection are the following:

(1) Development

The acquisition, new construction, reconstruction, or moderate or substantial rehabilitation of affordable housing, which may include--

- (A) real property acquisition;
- (B) site improvement;
- (C) the development of utilities and utility services;
- (D) conversion;
- (E) demolition;
- (F) financing;
- (G) administration and planning; and
- (H) other related activities.

(2) Housing services

The provision of housing-related services for affordable housing, including--

- (A) housing counseling in connection with rental or homeownership assistance;
- (B) the establishment and support of resident organizations and resident management corporations;
- (C) energy auditing;
- (D) activities related to the provisions of self-sufficiency and other services; and
- (E) other services related to assisting owners, tenants, contractors, and other entities participating or seeking to participate in other housing activities assisted pursuant to this section.

(3) Housing management services

The provision of management services for affordable housing, including--

- (A) the preparation of work specifications;
- (B) loan processing;

- (C) inspections;
- (D) tenant selection;
- (E) management of tenant-based rental assistance; and
- (F) management of affordable housing projects.

(4) Crime prevention and safety activities

The provision of safety, security, and law enforcement measures and activities appropriate to protect residents of affordable housing from crime.

(5) Model activities

Housing activities under model programs that are--

- (A) designed to carry out the purposes of this subchapter; and
- (B) specifically approved by the Secretary as appropriate for the purpose referred to in subparagraph (A).

§ 4230. Program requirements

(a) Rents

(1) Establishment

Subject to paragraph (2), as a condition to receiving grant amounts under this subchapter, the Director shall develop written policies governing rents and homebuyer payments charged for dwelling units assisted under this subchapter, including methods by which such rents and homebuyer payments are determined.

(2) Maximum rent

In the case of any low-income family residing in a dwelling unit assisted with grant amounts under this subchapter, the monthly rent or homebuyer payment (as applicable) for that dwelling unit may not exceed 30 percent of the monthly adjusted income of that family.

(b) Maintenance and efficient operation

(1) In general

The Director shall, using amounts of any grants received under this subchapter, reserve and use for operating under [section 4229](#) of this title such amounts as may be necessary to provide for the continued maintenance and efficient operation of such housing.

(2) Disposal of certain housing

This subsection may not be construed to prevent the Director, or any entity funded by the Department, from demolishing or disposing of housing, pursuant to regulations established by the Secretary.

(c) Insurance coverage

As a condition to receiving grant amounts under this subchapter, the Director shall require adequate insurance coverage for housing units that are owned or operated or assisted with grant amounts provided under this subchapter.

(d) Eligibility for admission

As a condition to receiving grant amounts under this subchapter, the Director shall develop written policies governing the eligibility, admission, and occupancy of families for housing assisted with grant amounts provided under this subchapter.

(e) Management and maintenance

As a condition to receiving grant amounts under this subchapter, the Director shall develop policies governing the management and maintenance of housing assisted with grant amounts under this subchapter.

§ 4231. Types of investments

(a) In general

Subject to [section 4230](#) of this title and an applicable housing plan approved under [section 4223](#) of this title, the Director shall have--

(1) the discretion to use grant amounts for affordable housing activities through the use of--

(A) equity investments;

(B) interest-bearing loans or advances;

(C) noninterest-bearing loans or advances;

(D) interest subsidies;

(E) the leveraging of private investments; or

(F) any other form of assistance that the Secretary determines to be consistent with the purposes of this subchapter; and

(2) the right to establish the terms of assistance provided with funds referred to in paragraph (1).

(b) Investments

The Director may invest grant amounts for the purposes of carrying out affordable housing activities in investment securities and other obligations, as approved by the Secretary.

§ 4232. Low-income requirement and income targeting

(a) In general

Housing shall qualify for affordable housing for purposes of this subchapter only if--

(1) each dwelling unit in the housing--

(A) in the case of rental housing, is made available for occupancy only by a family that is a low-income family at the time of the initial occupancy of that family of that unit; and

(B) in the case of housing for homeownership, is made available for purchase only by a family that is a low-income family at the time of purchase; and

(2) each dwelling unit in the housing will remain affordable, according to binding commitments satisfactory to the Secretary, for--

(A) the remaining useful life of the property (as determined by the Secretary) without regard to the term of the mortgage or to transfer of ownership; or

(B) such other period as the Secretary determines is the longest feasible period of time consistent with sound economics and the purposes of this subchapter, except upon a foreclosure by a lender (or upon other transfer in lieu of foreclosure) if that action--

(i) recognizes any contractual or legal rights of any public agency, nonprofit sponsor, or other person or entity to take an action that would--

(I) avoid termination of low-income affordability, in the case of foreclosure; or

(II) transfer ownership in lieu of foreclosure; and

(ii) is not for the purpose of avoiding low-income affordability restrictions, as determined by the Secretary.

(b) Exception

Notwithstanding subsection (a) of this section, housing assistance pursuant to [section 4228\(a\)\(2\)\(B\)](#) of this title shall be considered affordable housing for purposes of this subchapter.

§ 4233. Lease requirements and tenant selection

(a) Leases

Except to the extent otherwise provided by or inconsistent with the laws of the State of Hawaii, in renting dwelling units in affordable housing assisted with grant amounts provided under this subchapter, the Director, owner, or manager shall use leases that--

(1) do not contain unreasonable terms and conditions;

(2) require the Director, owner, or manager to maintain the housing in compliance with applicable housing codes and quality standards;

(3) require the Director, owner, or manager to give adequate written notice of termination of the lease, which shall be the period of time required under applicable State or local law;

(4) specify that, with respect to any notice of eviction or termination, notwithstanding any State or local law, a resident shall be informed of the opportunity, before any hearing or trial, to examine any relevant documents, record, or regulations directly related to the eviction or termination;

(5) require that the Director, owner, or manager may not terminate the tenancy, during the term of the lease, except for serious or repeated violation of the terms and conditions of the lease, violation of applicable Federal, State, or local law, or for other good cause; and

(6) provide that the Director, owner, or manager may terminate the tenancy of a resident for any activity, engaged in by the resident, any member of the household of the resident, or any guest or other person under the control of the resident, that--

(A) threatens the health or safety of, or right to peaceful enjoyment of the premises by, other residents or employees of the Department, owner, or manager;

(B) threatens the health or safety of, or right to peaceful enjoyment of their premises by, persons residing in the immediate vicinity of the premises; or

(C) is criminal activity (including drug-related criminal activity) on or off the premises.

(b) Tenant or homebuyer selection

As a condition to receiving grant amounts under this subchapter, the Director shall adopt and use written tenant and homebuyer selection policies and criteria that--

(1) are consistent with the purpose of providing housing for low-income families;

(2) are reasonably related to program eligibility and the ability of the applicant to perform the obligations of the lease; and

(3) provide for--

(A) the selection of tenants and homebuyers from a written waiting list in accordance with the policies and goals set forth in an applicable housing plan approved under [section 4223](#) of this title; and

(B) the prompt notification in writing of any rejected applicant of the grounds for that rejection.

§ 4234. Repayment

If the Department of Hawaiian Home Lands uses grant amounts to provide affordable housing under activities under this subchapter and, at any time during the useful life of the housing, the housing does not comply with the re-

quirement under [section 4232\(a\)\(2\)](#) of this title, the Secretary shall--

- (1) reduce future grant payments on behalf of the Department by an amount equal to the grant amounts used for that housing (under the authority of [section 4238\(a\)\(2\)](#) of this title); or
- (2) require repayment to the Secretary of any amount equal to those grant amounts.

§ 4235. Annual allocation

For each fiscal year, the Secretary shall allocate any amounts made available for assistance under this subchapter for the fiscal year, in accordance with the formula established pursuant to [section 4236](#) of this title to the Department of Hawaiian Home Lands if the Department complies with the requirements under this subchapter for a grant under this subchapter.

§ 4236. Allocation formula

(a) Establishment

The Secretary shall, by regulation issued not later than the expiration of the 6-month period beginning on December 27, 2000, in the manner provided under [section 4227](#) of this title, establish a formula to provide for the allocation of amounts available for a fiscal year for block grants under this subchapter in accordance with the requirements of this section.

(b) Factors for determination of need

The formula under subsection (a) of this section shall be based on factors that reflect the needs for assistance for affordable housing activities, including--

- (1) the number of low-income dwelling units owned or operated at the time pursuant to a contract between the Director and the Secretary;
- (2) the extent of poverty and economic distress and the number of Native Hawaiian families eligible to reside on the Hawaiian Home Lands; and
- (3) any other objectively measurable conditions that the Secretary and the Director may specify.

(c) Other factors for consideration

In establishing the formula under subsection (a) of this section, the Secretary shall consider the relative administrative capacities of the Department of Hawaiian Home Lands and other challenges faced by the Department, including--

- (1) geographic distribution within Hawaiian Home Lands; and
- (2) technical capacity.

(d) Effective date

This section shall take effect on December 27, 2000.

§ 4237. Remedies for noncompliance

(a) Actions by Secretary affecting grant amounts

(1) In general

Except as provided in subsection (b) of this section, if the Secretary finds after reasonable notice and opportunity for a hearing that the Department of Hawaiian Home Lands has failed to comply substantially with any provision of this subchapter, the Secretary shall--

(A) terminate payments under this subchapter to the Department;

(B) reduce payments under this subchapter to the Department by an amount equal to the amount of such payments that were not expended in accordance with this subchapter; or

(C) limit the availability of payments under this subchapter to programs, projects, or activities not affected by such failure to comply.

(2) Actions

If the Secretary takes an action under subparagraph (A), (B), or (C) of paragraph (1), the Secretary shall continue that action until the Secretary determines that the failure by the Department to comply with the provision has been remedied by the Department and the Department is in compliance with that provision.

(b) Noncompliance because of a technical incapacity

The Secretary may provide technical assistance for the Department, either directly or indirectly, that is designed to increase the capability and capacity of the Director of the Department to administer assistance provided under this subchapter in compliance with the requirements under this subchapter if the Secretary makes a finding under subsection (a) of this section, but determines that the failure of the Department to comply substantially with the provisions of this subchapter--

(1) is not a pattern or practice of activities constituting willful noncompliance; and

(2) is a result of the limited capability or capacity of the Department of Hawaiian Home Lands.

(c) Referral for civil action

(1) Authority

In lieu of, or in addition to, any action that the Secretary may take under subsection (a) of this section, if the Secretary has reason to believe that the Department of Hawaiian Home Lands has failed to comply substantially with any provision of this subchapter, the Secretary may refer the matter to the Attorney General of the United States with a recommendation that an appropriate civil action be instituted.

(2) Civil action

Upon receiving a referral under paragraph (1), the Attorney General may bring a civil action in any United States district court of appropriate jurisdiction for such relief as may be appropriate, including an action--

(A) to recover the amount of the assistance furnished under this subchapter that was not expended in accordance with this subchapter; or

(B) for mandatory or injunctive relief.

(d) Review

(1) In general

If the Director receives notice under subsection (a) of this section of the termination, reduction, or limitation of payments under this chapter, the Director--

(A) may, not later than 60 days after receiving such notice, file with the United States Court of Appeals for the Ninth Circuit, or in the United States Court of Appeals for the District of Columbia, a petition for review of the action of the Secretary; and

(B) upon the filing of any petition under subparagraph (A), shall forthwith transmit copies of the petition to the Secretary and the Attorney General of the United States, who shall represent the Secretary in the litigation.

(2) Procedure

(A) In general

The Secretary shall file in the court a record of the proceeding on which the Secretary based the action, as provided in [section 2112 of Title 28](#).

(B) Objections

No objection to the action of the Secretary shall be considered by the court unless the Department has registered the objection before the Secretary.

(3) Disposition

(A) Court proceedings

(i) Jurisdiction of court

The court shall have jurisdiction to affirm or modify the action of the Secretary or to set the action aside in whole or in part.

(ii) Findings of fact

If supported by substantial evidence on the record considered as a whole, the findings of fact by the Secretary shall be conclusive.

(iii) Addition

The court may order evidence, in addition to the evidence submitted for review under this subsection, to be taken by the Secretary, and to be made part of the record.

(B) Secretary

(i) In general

The Secretary, by reason of the additional evidence referred to in subparagraph (A) and filed with the court--

(I) may--

(aa) modify the findings of fact of the Secretary; or

(bb) make new findings; and

(II) shall file--

(aa) such modified or new findings; and

(bb) the recommendation of the Secretary, if any, for the modification or setting aside of the original action of the Secretary.

(ii) Findings

The findings referred to in clause (i)(II)(bb) shall, with respect to a question of fact, be considered to be conclusive if those findings are--

(I) supported by substantial evidence on the record; and

(II) considered as a whole.

(4) Finality

(A) In general

Except as provided in subparagraph (B), upon the filing of the record under this subsection with the court--

(i) the jurisdiction of the court shall be exclusive; and

(ii) the judgment of the court shall be final.

(B) Review by Supreme Court

A judgment under subparagraph (A) shall be subject to review by the Supreme Court of the United States upon

writ of certiorari or certification, as provided in [section 1254 of Title 28](#).

§ 4238. Monitoring of compliance

(a) Enforceable agreements

(1) In general

The Director, through binding contractual agreements with owners or other authorized entities, shall ensure long-term compliance with the provisions of this subchapter.

(2) Measures

The measures referred to in paragraph (1) shall provide for--

(A) to the extent allowable by Federal and State law, the enforcement of the provisions of this subchapter by the Department and the Secretary; and

(B) remedies for breach of the provisions referred to in paragraph (1).

(b) Periodic monitoring

(1) In general

Not less frequently than annually, the Director shall review the activities conducted and housing assisted under this subchapter to assess compliance with the requirements of this subchapter.

(2) Review

Each review under paragraph (1) shall include onsite inspection of housing to determine compliance with applicable requirements.

(3) Results

The results of each review under paragraph (1) shall be--

(A) included in a performance report of the Director submitted to the Secretary under [section 4239](#) of this title; and

(B) made available to the public.

(c) Performance measures

The Secretary shall establish such performance measures as may be necessary to assess compliance with the requirements of this subchapter.

§ 4239. Performance reports

(a) Requirement

For each fiscal year, the Director shall--

- (1) review the progress the Department has made during that fiscal year in carrying out the housing plan submitted by the Department under [section 4223](#) of this title; and
- (2) submit a report to the Secretary (in a form acceptable to the Secretary) describing the conclusions of the review.

(b) Content

Each report submitted under this section for a fiscal year shall--

- (1) describe the use of grant amounts provided to the Department of Hawaiian Home Lands for that fiscal year;
- (2) assess the relationship of the use referred to in paragraph (1) to the goals identified in the housing plan;
- (3) indicate the programmatic accomplishments of the Department; and
- (4) describe the manner in which the Department would change its housing plan submitted under [section 4223](#) of this title as a result of its experiences.

(c) Submissions

The Secretary shall--

- (1) establish a date for submission of each report under this section;
- (2) review each such report; and
- (3) with respect to each such report, make recommendations as the Secretary considers appropriate to carry out the purposes of this subchapter.

(d) Public availability

(1) Comments by beneficiaries

In preparing a report under this section, the Director shall make the report publicly available to the beneficiaries of the Hawaiian Homes Commission Act, 1920 (42 Stat. 108 et seq.) and give a sufficient amount of time to permit those beneficiaries to comment on that report before it is submitted to the Secretary (in such manner and at such time as the Director may determine).

(2) Summary of comments

The report shall include a summary of any comments received by the Director from beneficiaries under paragraph (1) regarding the program to carry out the housing plan.

[§ 4240. Review and audit by Secretary](#)

(a) Annual review

(1) In general

The Secretary shall, not less frequently than on an annual basis, make such reviews and audits as may be necessary or appropriate to determine whether--

(A) the Director has--

(i) carried out eligible activities under this subchapter in a timely manner;

(ii) carried out and made certifications in accordance with the requirements and the primary objectives of this subchapter and with other applicable laws; and

(iii) a continuing capacity to carry out the eligible activities in a timely manner;

(B) the Director has complied with the housing plan submitted by the Director under [section 4223](#) of this title; and

(C) the performance reports of the Department under section 4240 [\[FN1\]](#) of this title are accurate.

(2) Onsite visits

Each review conducted under this section shall, to the extent practicable, include onsite visits by employees of the Department of Housing and Urban Development.

(b) Report by Secretary

The Secretary shall give the Department of Hawaiian Home Lands not less than 30 days to review and comment on a report under this subsection. After taking into consideration the comments of the Department, the Secretary may revise the report and shall make the comments of the Department and the report with any revisions, readily available to the public not later than 30 days after receipt of the comments of the Department.

(c) Effect of reviews

The Secretary may make appropriate adjustments in the amount of annual grants under this subchapter in accordance with the findings of the Secretary pursuant to reviews and audits under this section. The Secretary may adjust, reduce, or withdraw grant amounts, or take other action as appropriate in accordance with the reviews and audits of the Secretary under this section, except that grant amounts already expended on affordable housing activities may not be recaptured or deducted from future assistance provided to the Department of Hawaiian Home Lands.

[\[FN1\]](#) So in original. Probably should be [section “4239”](#) of this title.

§ 4241. Government Accountability Office audits

To the extent that the financial transactions of the Department of Hawaiian Home Lands involving grant amounts under this subchapter relate to amounts provided under this subchapter, those transactions may be audited by the Comptroller General of the United States under such regulations as may be prescribed by the Comptroller General.

The Comptroller General of the United States shall have access to all books, accounts, records, reports, files, and other papers, things, or property belonging to or in use by the Department of Hawaiian Home Lands pertaining to such financial transactions and necessary to facilitate the audit.

§ 4242. Reports to Congress

(a) In general

Not later than 90 days after the conclusion of each fiscal year in which assistance under this subchapter is made available, the Secretary shall submit to Congress a report that contains--

- (1) a description of the progress made in accomplishing the objectives of this subchapter;
- (2) a summary of the use of funds available under this subchapter during the preceding fiscal year; and
- (3) a description of the aggregate outstanding loan guarantees under [section 1715z-13b of Title 12](#).

(b) Related reports

The Secretary may require the Director to submit to the Secretary such reports and other information as may be necessary in order for the Secretary to prepare the report required under subsection (a) of this section.

§ 4243. Authorization of appropriations

There are authorized to be appropriated to the Department of Housing and Urban Development for grants under this subchapter such sums as may be necessary for each of fiscal years 2001, 2002, 2003, 2004, and 2005.

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